

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

DPWN HOLDINGS (USA), INC.,

Plaintiff,

v.

BRITISH AIRWAYS PLC,

Defendant.

Civil Action No. 15-5751

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff DPWN Holdings (USA), Inc., on behalf of itself and as the assignee of all relevant claims of its affiliated entities (collectively “DHL”), brings this action for damages and injunctive relief to remedy price-fixing violations of Sherman Act §1 by Defendant British Airways Plc. (“British Airways” or “BA”). DHL alleges as follows:

INTRODUCTION

1. British Airways and other airfreight carriers (“Airfreight Carriers”) engaged in an unlawful global cartel (the “Cartel”) from at least February 1, 2000 through at least the third quarter of 2006 (the “Cartel Period”), to fix, raise, maintain and/or stabilize the prices for air cargo shipments (“Air Cargo Services”), including shipments to and from the United States (“U.S. Air Cargo Shipping Services”). In particular, the conspiring Airfreight Carriers fixed fuel surcharges (“Fuel Surcharges”), security surcharges (“Security Surcharges”), and base-freight rates (“Base Rates”). As a result, British Airways and the other Cartel members substantially overcharged DHL during the Cartel Period and the anticompetitive effects of the Cartel

continued for at least two more years, resulting in damages to DHL from February 1, 2000 through September 30, 2008 (the “Damage Period”).

2. On August 23, 2007, British Airways pled guilty to price fixing of air-cargo rates from at least March 22, 2002 until at least February 14, 2006 on routes to and from the United States in violation of Sherman Act §1. British Airways paid a criminal fine of \$200 million.¹ In its plea agreement British Airways admitted that it had “participated in a conspiracy among major international air cargo carriers, the primary purpose of which was to suppress and eliminate competition by fixing components of the air-cargo rates charged to customers for international air shipments, including shipments to and from the United States.”

3. To date, a total of 20 carriers of airfreight (“Airfreight Carriers”) have pled guilty to felony antitrust violations and paid almost \$1.75 billion in criminal fines to the United States Department of Justice (“DOJ”) for their involvement in the Cartel. In addition, 13 Airfreight Carrier executives have been charged in the government’s investigation and six have pled guilty, paid criminal fines and been sentenced to serve varying jail terms for their roles in the Cartel.

4. On May 20, 2011, British Airways entered into a settlement agreement with a class of direct purchasers, whereby British Airways agreed to pay the class \$89.5 million for its participation in the Cartel. DHL was a member of the putative class of direct purchasers with which British Airways settled. However, DHL timely opted out of the class settlement. On April 22, 2014, DHL and British Airways entered into an agreement that tolled the statute of limitations on DHL’s claims against BA from that date through the date of filing of this Complaint.

¹ British Airways paid criminal fines totaling \$300 million, \$100 million of which was for its participation in fixing the price of passenger airfare and \$200 million of which was for its participation in the price fixing cartel described in this Complaint. *U.S. v. British Airways PLC*, Criminal No. 07-183 (JDB), 10 (D.D.C. Aug. 23, 2007) (Plea Agreement).

JURISDICTION AND VENUE

5. This action is brought pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, to obtain injunctive relief and to recover damages and costs of suit, including reasonable attorneys' fees and costs, for the injuries sustained by DHL as a result of the Cartel in which British Airways participated in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, as alleged herein.

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1337, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26.

7. British Airways' Sherman Act violations occurred in and had a direct and substantial effect on United States commerce, including United States import commerce. These violations give rise to DHL's claims in this action under Section 1 of the Sherman Act.

8. Venue is proper in this District under Sections 4, 12 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22 and 26, and 28 U.S.C. § 1391(b), (c) and (d). At all relevant times, British Airways resided, transacted business, maintained offices, maintained agents or was found in this District, and events giving rise to DHL's claims, as well as a substantial portion of the affected interstate trade and commerce as described below, occurred in this District. British Airways also inserted products or services in the stream of commerce that were intended to and did reach this District.

PARTIES

9. Plaintiff DPWN Holdings (USA), Inc. ("DPWN") is a corporation organized under the laws of Ohio, with its principal place of business located at 1200 South Pine Island Road, Suite 600, Plantation, Florida 33324. DPWN is the holding company of all DHL operating companies in the United States, including but not limited to DHL Express (USA), Inc.,

Exel, Inc. and Danzas—which, together with DPWN, are collectively referred to herein as “DHL.” DPWN is the assignee of the legal right to prosecute and recover damages in this action of its commonly-owned companies that purchased U.S. Airfreight Shipping Services from British Airways during the Cartel Period. DHL is engaged in the business of providing, among other things, logistics and freight-forwarding services to manufacturers and other businesses that require the transportation of goods to and from the United States. DHL is one of the largest (if not the largest) purchasers of U.S. Airfreight Shipping Services. At all relevant times, DHL directly purchased U.S. Airfreight Shipping Services from British Airways.

10. Defendant British Airways is a foreign company with its headquarters located at Waterside, UB7 GB Harmondsworth, Middlesex, England. British Airways conducts Airfreight Shipping Services throughout the world, including in the United States and this District, through its cargo division, British Airways World Cargo.

INTERSTATE COMMERCE

11. At all times relevant to this action, British Airways engaged in a continuous and uninterrupted flow of transactions in U.S. Airfreight Shipping Services that occurred in and involved interstate commerce, including United States import commerce. British Airways’ unlawful conduct affected the flow of such commerce to customers of U.S. Airfreight Shipping Services, such as DHL, and was intended to, and did, have a direct, substantial and reasonably foreseeable effect upon United States interstate commerce.

FACTS

I. The Airfreight Shipping Services Market

12. The Airfreight Shipping Services market was susceptible to an overarching, global price fixing cartel during the Cartel Period for the following reasons:

- a. The Cartel members carried 87% of global shipments by volume during the Cartel Period.²
- b. The Cartel members participated in a web of regional and global trade associations that facilitated cooperation among cartel members and made it easier to monitor the Cartel.³
- c. Total demand for Airfreight Shipping Services was inelastic, but demand for particular Airfreight Shipping Services was elastic, and customers such as DHL, shifted business among Airfreight Carriers based in large part on price. Other methods of shipping did not provide a reasonable substitute to Airfreight Shipping Services. Boat, truck, and rail freight services are insufficient substitutes for high-value-to-weight, time sensitive, temperature-sensitive, and security-sensitive products. Indeed, air cargo is 14 to 16 times as expensive as ocean shipping.⁴
- d. The services provided by Airfreight Carriers are fungible, thus making price fixing both feasible and desirable.⁵ Price is the primary factor in choosing Airfreight Carriers.⁶
- e. Barriers to entry are high. They include high startup costs, the need for specialized equipment and personnel, and complex regulatory requirements.⁷
- f. The ratio of fixed cost to variable costs for Cartel members is high.⁸
- g. The public announcements of Surcharges and the absence of any distance component provided transparency, permitting easy monitoring of the Cartel.⁹

² Magistrates Finding & Recommendations relating to Class Certification (October 16, 2008) at 81.

³ Magistrates Finding & Recommendations relating to Class Certification (October 16, 2008) at 84.

⁴ Magistrates Finding & Recommendations relating to Class Certification (October 16, 2008) at 84.

⁵ Magistrates Finding & Recommendations relating to Class Certification (October 16, 2008) at 85.

⁶ Id. at 85-86.

⁷ Id. at 86.

⁸ Id. at 87.

13. The Cartel members had strong incentives to collude. Prior to the Cartel Period, competition was putting downward pressure on Airfreight Carriers, and the Air Carriers were worried that price wars would undermine profits.

14. Several Airfreight Carriers attempted to impose fuel surcharges prior to the Cartel Period, but those Airfreight Carriers were forced to withdraw them because of competition from other Airfreight Carriers that had not instituted fuel surcharges.

15. Prior to and throughout the Cartel Period, British Airways and other Cartel members, including British Airways, participated in various trade associations during which they had the opportunity to, and did, exchange information on prices and otherwise engage in collusive conduct.¹⁰ The trade associations included the International Air Transport Association (“IATA”), the Global Cargo Council, Inc. (“GCCCI”), the Airline Cargo Council of Switzerland (“ACCS”), the Air Cargo Representative Board of Indonesia (“ACRB”), the Air Cargo Association of the Netherlands, the Air Cargo Agents Association of India (“ACAA”), the Board of Airline Representatives of India (“BAR India”), the Board of Airline Representatives in Indonesia (“BARINDO”), the Hong Kong Board of Airlines Representatives (“Hong Kong BAR”), the Singapore Board of Airline Representatives (“Singapore BAR”), and the Airline Cargo Business Association of Thailand (“ACBA”) – all of which were used by Cartel members to facilitate the Cartel. British Airways also participated in a “coffee group” with Cartel members Air France, KLM, Lufthansa Cargo, Nippon Cargo and SAS, among others. These meetings provided an opportunity for the Airfreight Carriers to exchange information about

⁹ Id. at 87.

¹⁰ Minutes of the Meeting, Global Cargo Council, Inc. (Feb. 27, 1998) [LH_CIV_0240851] (“Unprofitable routes will be eliminated.”). *See also* Airline Cargo Benchmark 2004/5 [LH_CIV_0003200] (describing a program through which the Airfreight Carriers shared information on revenue, costs, capacity, and other competitively sensitive topics); E-mail between Lufthansa Cargo employees (Aug. 17, 2004) [LH_CIV_0008167] (noting excess capacity).

prices, including base-freight rates and surcharges and to reach agreements and “mutual understandings,” allowing them to “make more money.”¹¹

16. British Airways also participated in an informal group known as BLACKS (composed of Cartel members British Airways, Lufthansa Cargo, Air France, Cargolux, KLM and Swiss WorldCargo). One Cartel member, Swiss WorldCargo, described the group as

the market leaders, and we are in constant contact with them. Talking about fuel surcharge increase, they all speak the same language: they increase as soon as the index is reached!¹²

17. Agreements reached at trade association meetings are only immune from U.S. antitrust law if the U.S. Department of Transportation (“DOT”) grants immunity, and the DOT never granted immunity for any of the Cartel conduct at issue here.

II. The Cartel Fixed Fuel Surcharges

A. Background

18. The concept of a jointly-set surcharge was discussed as early as 1993 at IATA meetings. At the time, the Airfreight Carriers had limited antitrust immunity in the European Union through a “block exemption.”¹³ But, according to the European Commission’s Directorate General for Competition (“DG Comp”), the block exemption “applie[d] solely to interlineable fares and for the arrangements necessary that fares or rates should be interlineable.”¹⁴ The block exemption did not cover the coordinated implementation of

¹¹ Minutes of Monthly Meeting, Global Carriers Council, Inc. (Jan. 27, 2000) [LH_CIV_0240820].

¹² E-mail between Swiss WorldCargo employees (Oct. 12, 2004) [SIA_CIV_0000558].

¹³ Memorandum from the Director, Tariff Coordination, IATA to the Members Participating in Tariff Coordinating Conferences, at 2 (Mar. 30, 1993) [QAL-01-193783]; Memorandum from the Director, Tariff Coordination, IATA, to the Members Participating in Tariff Coordinating Conferences, at 13 (Apr. 7, 1993) [QAL-01-193785]; Telex from W. Althen to IATA Members (May 17, 1993) [QAL-01-193825].

¹⁴ Memorandum from the Director, Tariff Coordination, IATA, to the Members Participating in Tariff Coordinating Conferences, at 11 (Apr. 7, 1993) [QAL-01-193785].

surcharges, a legal conclusion that DG Comp shared with IATA, and which IATA shared with its members.¹⁵

19. On July 10, 1996, DG Comp announced that it was withdrawing its block exemption for cargo tariff consultations effective June 30, 1997, because it found that prices developed under IATA tariff coordination “were significantly higher than market prices.”¹⁶ IATA subsequently applied to DG Comp for an individual exemption for cargo tariff consultations, but DG Comp denied IATA’s application.

20. In the autumn of 1996, the price of aviation fuel was increasing. At the same time, competition was putting downward pressure on the price of Airfreight Shipping Services, and Airfreight Carriers were concerned about engaging in price wars that would undermine profits. In response, Airfreight Carriers, including British Airways, discussed among themselves whether a fuel surcharge should be adopted.¹⁷

21. In October 1996, British Airways and several Airfreight Carriers each announced a fuel surcharge.¹⁸ British Airways “decided to introduce the [fuel] surcharge under the name of

¹⁵ Letter from J. Temple Lang, Director, Commission of the European Communities, Directorate-General for Competition, to John P. McCaffrey, Senior Director, Traffic, IATA, at 2 (May 7, 1993) [QAL-01-193817]; Memorandum from the Director, Tariff Coordination, IATA, to the Members Participating in Tariff Coordinating Conferences, at 10-11 (Apr. 7, 1993) [QAL-01-193785].

¹⁶ Agenda, IATA Cargo Committee, 9th Meeting, at 25 (Mar. 3, 1997) [QAL-01-194074].

¹⁷ See, e.g., Minutes, Emergency ACCS Meeting (Nov. 13, 1996) [SIA_CIV_0030231]; Minutes, Extraordinary BAR Cargo Sub-Committee Meeting, Singapore Board of Airline Representatives (Nov. 6, 1996) [SIA_CIV_0028160]; Telex between Qantas Airways employees (Oct. 30, 1996) [QAL-01-193950]; Memorandum, Qantas Airways (Oct. 30, 1996) [QAL-01-193952]; Memorandum, Qantas Airways (Oct. 31, 1996) [QAL-01-193955]; Facsimile between Qantas Airways employees (Oct. 31, 1996) [QAL-01-193959]; gFacsimile between Qantas Airways employees (Nov. 6, 1996) [QAL-01-193979]; Facsimile between Qantas Airways employees (Nov. 6, 1996) [QAL-01-193986]; Minutes, Extraordinary BAR Cargo Sub-Committee Meeting, Singapore Board of Airline Representatives (Nov. 6, 1996) [SIA_CIV_0028160].

¹⁸ See, e.g., Facsimile, Air France Cargo, *Air France Cargo Implements a Fuel Surcharge from Nov 4 until Further Notice* (Oct. 30, 1996) [LH_CIV_0143510]; Press Release, Lufthansa Cargo, *Lufthansa Cargo Applies a Fuel Surcharge* (Oct. 25, 1996) (unofficial translation) [QAL-01-193945]; Facsimile from Lufthansa Cargo to Schenker Int’l (Australia) (Oct. 28, 1996) [QAL-01-193949]; Letter from British Airways World Cargo Sales to Customer (Oct. 31, 1996) [QAL-01-193979]; Letter from Qantas Airways Limited to Customer (Nov. 1, 1996) [QAL-01-193979]; Customer Notice, Qantas Airways (Nov. 1, 1996) [QAL-01-193960]; Letter from Khaw Host Eng, Manager Cargo Marketing, Singapore Airlines, to All SIA Cargo Agents, Singapore (Nov. 6, 1996); Letter from KLM Cargo to Cargo Customer (Oct. 29, 1996) [LH_CIV_0103095] See also Facsimile from Ulf Barnard, General

‘operational surcharge’ as a fuel surcharge is illegal.”¹⁹ However, the Airfreight Carriers that announced fuel surcharges could not sustain them in the face of competition from other Airfreight Carriers that did not impose fuel surcharges.

22. On December 9, 1996, the IATA Cargo Tariff Conference Steering Group convened a “special meeting” in Geneva, Switzerland “to determine what further action was to be taken” with respect to the increasing price of aviation fuel.²⁰ British Airways was a member of the Cargo Steering Group and attended the meeting.²¹ Other attendees included Air France, All Nippon Airways, Korean Air, Japan Airlines, Nippon Cargo Airlines, Scandinavian Airlines System (“SAS”) and United Airlines. According to the Minutes, it was “noted” that “events of the recent past [unsuccessful attempts to impose fuel surcharges] and the resultant market confusion, underline the need for carriers in the future, to develop concerted and co-ordinated industry action under the auspices of an IATA conference.”²² The Cargo Steering Group concluded that all members of the Cargo Tariff Coordinating Conference would meet again in January 1997 to further coordinate on a joint course of action.²³

B. The Cartel Agreement to Fix Fuel Surcharges

23. On January 14-16, 1997, at the Special Composite Meeting of Cargo Tariff Coordinating Conferences held in Geneva, Switzerland, the IATA Cargo Steering Group presented its recommendation that the Conference “attempt to adopt surcharge Resolutions for

Manager, Schenker Int’l (Australia) to Ken Cavanagh, Siemens Ltd. (Oct. 31, 1996) [QAL-01-193958]; E-mail between Qantas Airways employees (Nov. 6, 1996) [QAL-01-193979]; Telex between Qantas Airways employees (Nov. 12, 1996) [QAL-01-194015].

¹⁹ Memorandum, Qantas Airways (Oct. 31, 1996) [QAL-01-193955].

²⁰ Agenda, IATA Cargo Committee, 9th Meeting, at 24 (Mar. 3, 1997) [QAL-01-194074].

²¹ Minutes, Special Meeting, Cargo Tariff Conferences Steering Group, at 4 (Dec. 9, 1996) [SIA_CIV_0030544].

²² Minutes, Special Meeting, Cargo Tariff Conferences Steering Group, at 4 (Dec. 9, 1996) [SIA_CIV_0030544].

²³ Agenda, IATA Cargo Committee, 9th Meeting, at 24 (Mar. 3, 1997) [QAL-01-194074].

all routes.”²⁴ Roy Hurley of British Airways attended the Conference.²⁵ British Airways made the following submission to the Conference:

Aviation fuel costs have risen significantly since mid-1996 and are still approx[imately] 40[%] above the base point established in July 1990. Consequently urgent industry compensatory price increases are r [sic] required.

We anticipate considerable debate at the meeting on the methodology used to secure price increases to offset fuel prices. Invariably this will surround increases to rates (percentage or fixed increase per [kilogram]) and the old argument of IATA/market price differentials. It will also include the methodology of establishing a separate surcharge perhaps as a due carrier charge and not in the actual price at all. Perhaps we should consider a separate rating line as a hybrid between the two approaches. The conference should be open minded to all approaches with the objective of securing a realistic and workable solution that win actually provide the neccessary [sic] revenue compensations to the industry that is clearly justified. BA [British Airways] is open to all approaches – even a combination of the two may be appropriate provided theres [sic] is total transparency and understanding for both airlines and customers.

If a separate charge solution is considered then it is essential for the conference to establish associated codes and application rules. *As a guide BA will be seeking across the board price increases of five (5) percent or in the case of fixed amounts increases of between USD0.05 and USD0.10 per [kilogram] depending upon stage distance. . . . [W]e propose that any agreed price increases should be effective 1Mar97.*

*We would also like the conference to consider a variable price “triggered” by an enabling resolution which would only come into effect if a base point was exceeded by a certain tolerance.*²⁶

24. The IATA Director of Tariff Affairs and Conferences, Tom Murphy, described the “highlights” of that Special Composite Meeting as follows:

²⁴ Minutes, Special Composite Meeting of Cargo Tariff Coordinating Conferences, at 2 (Jan. 14-16, 1997) [QAL-01-194051].

²⁵ Minutes, Special Composite Meeting of Cargo Tariff Coordinating Conferences, at 13 (Jan. 14-16, 1997) [QAL-01-194051].

²⁶ IATA, Submissions by Carriers, at 5 (Jan. 14, 1997) [SIA_CIV_0030604] (emphasis added).

*It was agreed that a main objective of the [Composite Fuel] Conference was to consolidate what was happening in the market place into an IATA industry world-wide agreement. . . . Despite some initial submissions for a percentage increase on the rates it was the feeling of the meeting that this would achieve little revenue enhancement. Therefore it was agreed that the conference would work towards a separate fuel charge or fee to be applied world-wide. . . .*²⁷

25. British Airways supported the Steering Group's recommendation of a worldwide per-kilogram fuel surcharge that did not vary by route.²⁸ However, several Airfreight Carriers initially opposed the resolution.²⁹ Five Airfreight Carriers believed that a surcharge was unnecessary because the increase in fuel costs already was being recouped through increased passenger fares or through base-freight rates.³⁰ Four Airfreight Carriers opposed a flat per kilogram surcharge because the proposed surcharge did not differentiate between area and route.³¹ Another Airfreight Carrier wanted a percentage surcharge, rather than the proposed cents-per-kilogram surcharge.³² Yet other carriers suggested imposition of the Fuel Surcharge on a limited geographical basis, which British Airways expressly opposed, stating that it "did not wish to jeopardize a global agreement by taking action on a fragmented and local basis."³³

26. Members of the IATA Cargo Tariff Coordinating Conferences, including British Airways, were aware of the antitrust risks of their conduct. The director of the IATA Legal Department, Andrew Charlton, addressed the Special Composite Meeting as follows:

²⁷ Telex from Director, Tariff Affairs and Conferences, IATA, to All Members that Participated in the Cargo Composite Conference, at 3, 5 (Jan. 20, 1997) [SIA_CIV_0030629] (emphasis added).

²⁸ Minutes, Special Composite Meeting of Cargo Tariff Coordinating Conferences, at 13 (Jan. 14-16, 1997) [QAL-01-194051]; Agenda, IATA Cargo Committee, 9th Meeting, at 24-26 (Mar. 3, 1997) [QAL-01-194074].

²⁹ Minutes, Special Composite Meeting of Cargo Tariff Coordinating Conferences, at 3-4 (Jan. 14-16, 1997) [QAL-01-194051].

³⁰ Minutes, Special Composite Meeting of Cargo Tariff Coordinating Conferences, at 3-4 (Jan. 14-16, 1997) [QAL-01-194051].

³¹ Minutes, Special Composite Meeting of Cargo Tariff Coordinating Conferences, at 3-4 (Jan. 14-16, 1997) [QAL-01-194051].

³² Minutes, Special Composite Meeting of Cargo Tariff Coordinating Conferences, at 3-4 (Jan. 14-16, 1997) [QAL-01-194051].

³³ Minutes, Special Composite Meeting of Cargo Tariff Coordinating Conferences, at 4 (Jan. 14-16, 1997) [QAL-01-194051] (emphasis added).

Antitrust laws prohibit competitors reaching any form of agreement, understanding or arrangement which is likely to have an impact on price. As a general rule, competitors cannot discuss in any way the price they intend charging consumers. There are very few exceptions to this. The relevant exception is where immunity has been granted by the relevant authority for rates reached pursuant to a particular procedure and within the strict confines of the terms of the approval itself. IATA has such an approval for this conference. These immunities are very rare.

Without an immunity, authorities regard with great suspicion any situation where competitors charge the same rate. In the event that there is any evidence whatsoever that competitors have had an opportunity to communicate in any way, and charge the same rate, there is a very strong assumption that they do so having colluded.

Until the particular approval is granted for any rate agreed at this conference, that situation would apply. In other words, *in my opinion, any airline which moves to charge the rate which is agreed at this conference before government approval, and therefore antitrust immunity, is obtained, would face a very strong evidential presumption that the rate being charged had been agreed between competitors and without antitrust immunity.* The question is one of evidence.³⁴

27. Notwithstanding the antitrust risk and recognizing that concerted action was necessary for fuel surcharges to be imposed successfully, the attendees pursued the Steering Group's recommendation to charge a fuel surcharge on a global basis, including for U.S. Airfreight Shipping Services. In particular, the attendees, including British Airways, developed Resolution 116ss, which contained the mechanism by which the Airfreight Carriers would later impose Cartel Fuel Surcharges pursuant to a cartel agreement. Specifically, the Fuel Surcharge would be tied to percentage changes in the spot price of aviation fuel as tracked by the IATA Fuel Price Index ("FPI"), which IATA benchmarked against the June 1996 average spot price of aviation fuel in five markets around the world (i.e., IATA set its FPI at 100 to represent the

³⁴ Minutes, Special Composite Meeting of Cargo Tariff Coordinating Conferences, at 5-6 (Jan. 14-16, 1997) (emphasis added) [QAL-01-194051].

average spot price of aviation fuel in June 1996).³⁵ The Airfreight Carriers, including British Airways, agreed that all IATA members would implement this Fuel Surcharge by March 1, 1997, provided the IATA FPI remained above 110 (i.e., spot prices remained ten percent above the June 1996 spot price).³⁶ Thereafter, the Fuel Surcharge would remain in effect until the FPI fell below 110.³⁷ The initial Fuel Surcharge would be USD 0.10 (or the equivalent amount in local currency) per kilogram, regardless of the distance shipped.³⁸ If the FPI continued to increase and reached 150, the Airfreight Carriers agreed they would convene an IATA meeting to discuss further increasing the Fuel Surcharge.³⁹

28. Twenty Airfreight Carriers, including British Airways, voted in favor of approving Resolution 116ss, while five abstained and two initially opposed it—Lufthansa Cargo and Swissair.⁴⁰ At that time, Lufthansa Cargo preferred an approach to Fuel Surcharges that appeared to be one of unilateral decision-making.⁴¹ Because there was not unanimous support for the resolution, it was defeated pursuant to IATA rules.⁴² However, that was not the end of the resolution.

³⁵ Minutes, Special Composite Meeting of Cargo Tariff Coordinating Conferences, at 8-9, 16 (Jan. 14-16, 1997) [QAL-01-194051]. As of October 1996, the FPI exceeded 140 (i.e., according to IATA, the spot price of aviation fuel had increased by forty percent from June to October 1996). Agenda, IATA Cargo Committee, 9th Meeting, at 24 (Mar. 3, 1997) [QAL-01-194074]. In reality, the increase in fuel costs faced by Airfreight Carriers was significantly less than forty percent. See Order, U.S. Dep't of Transportation, Docket OST-2000-6837-2, at 2 (Mar. 17, 2000) [QAL-01-194642] (the U.S. DOT noting that "the actual average fuel prices, as reported to the Department [by IATA] . . . measured between June 1996 and November 1999, increased about six percent, while IATA's index, based on spot market prices, showed a 34 percent increase over the same period.").

³⁶ Agenda, IATA Cargo Committee, 9th Meeting, at 25 (Mar. 3, 1997) [QAL-01-194074].

³⁷ Agenda, IATA Cargo Committee, 9th Meeting, at 25 (Mar. 3, 1997) [QAL-01-194074].

³⁸ For this Resolution, the Fuel Surcharge would not apply in some countries. Agenda, IATA Cargo Committee, 9th Meeting, at 25 (Mar. 3, 1997) [QAL-01-194074]. The Fuel Surcharge imposed in 2000 had no such limitation.

³⁹ Agenda, IATA Cargo Committee, 9th Meeting, at 25 (Mar. 3, 1997) [QAL-01-194074].

⁴⁰ Minutes, Special Composite Meeting of Cargo Tariff Coordinating Conferences, at 10 (Jan. 14-16, 1997) [QAL-01-194051]. Swissair was previously the national airline of Switzerland, but filed for bankruptcy in March 2002. Swiss International Air Lines ("Swiss") is the successor Airfreight Carrier to Swissair. Swiss WorldCargo is the cargo subsidiary of Swiss.

⁴¹ Minutes, Special Composite Meeting of Cargo Tariff Coordinating Conferences, at 10 (Jan. 14-16, 1997) [QAL-01-194051].

⁴² Minutes, Special Composite Meeting of Cargo Tariff Coordinating Conferences, at 12 (Jan. 14-16, 1997) [QAL-01-194051]; Agenda, IATA Cargo Committee, 9th Meeting, at 26 (Mar. 3, 1997) [QAL-01-194074].

29. On March 3, 1997, the IATA Cargo Committee met in Long Beach, California.⁴³ Two British Airways representatives attended.⁴⁴ They discussed, among other things, IATA's application to the European Commission for an individual exemption for "Cargo Tariff Consultations" and the results of the special IATA "Fuel Conference," which was created to address the issue of fuel price increases.⁴⁵ DG Comp rejected IATA's application for an individual exemption.

30. Later in 1997, recognizing the importance of concerted action to making the Fuel Surcharge effective, Lufthansa Cargo withdrew its objection to the IATA Fuel Surcharge resolution and suggested that IATA adopt it by mail vote.⁴⁶ Thereafter, the Airfreight Carriers, including British Airways, voted to adopt a revised version of Resolution 116ss by Mail Vote 875 on August 7, 1997, with an intended effective date of October 1, 1997.⁴⁷

31. Resolution 116ss, as passed, was the same as the initial resolution in key respects. It used the IATA FPI benchmarked to the June 1996 spot price of fuel as the mechanism for implementing the Fuel Surcharge.⁴⁸ But the triggering amount was changed. If the FPI equaled or exceeded 130 on or after October 1, 1997, the Airfreight Carriers would implement a Fuel Surcharge not to exceed USD 0.10 per kilogram except on "minimum charge" shipments.⁴⁹ As with the original resolution, if at any time the FPI exceeded 150 for two consecutive weeks, IATA would convene a meeting of the Cargo Tariff Coordinating Conferences to consider

⁴³ Summary of Action, IATA Cargo Committee, 9th Meeting (Mar. 3, 1997) [QAL-01-194147]; Agenda, IATA Cargo Committee, 9th Meeting, at 22 (Mar. 3, 1997) [QAL-01-194074].

⁴⁴ Summary of Action, IATA Cargo Committee, 9th Meeting, at 12-13 (Mar. 3, 1997) [QAL-01-194147].

⁴⁵ Summary of Action, IATA Cargo Committee, 9th Meeting, at 12-13 (Mar. 3, 1997) [QAL-01-194147].

⁴⁶ Agenda, IATA Cargo Committee, 10th Meeting, at 41 (Sept. 10, 1997) [QAL-01-194239].

⁴⁷ Agenda, IATA Cargo Committee, 10th Meeting, at 41 (Sept. 10, 1997) [QAL-01-194239]; Memorandum from Director, Tariff Affairs and Conferences, IATA, to Members Participating in Tariff Coordinating Conferences (Aug. 12, 1997) [QAL-01-194217].

⁴⁸ Memorandum from Director, Tariff Affairs and Conferences, IATA, to Members Participating in Tariff Coordinating Conferences (Aug. 12, 1997) [QAL-01-194217].

⁴⁹ Memorandum from Director, Tariff Affairs and Conferences, IATA, to Members Participating in Tariff Coordinating Conferences (Aug. 12, 1997) [QAL-01-194217]; Agenda, IATA Cargo Committee, 10th Meeting, at 41 (Sept. 10, 1997) [QAL-01-194239].

further increasing the Fuel Surcharge.⁵⁰ Similarly consistent with the original resolution, the revised resolution provided that, if the FPI fell below 130 for two consecutive weeks, IATA would suspend the Fuel Surcharge.⁵¹

32. Although the Airfreight Carriers, including British Airways, adopted the resolution in 1997, IATA did not submit Resolution 116ss to DOT until early 2000.⁵² The Airfreight Carriers, including British Airways, knew that they could not lawfully implement Resolution 116ss without approval from the DOT. Indeed, at the May 1998 IATA Composite Meeting of Cargo Tariff Coordinating Conferences in Geneva, Switzerland, the Airfreight Carriers noted that Resolution 116ss “could not be declared effective because of the outstanding approval of Argentina, India and USA (‘required governments’).”⁵³ In particular, IATA noted that

As with all traffic conference meetings, these [IATA] meetings had immunity from US anti-trust laws, *on the condition that all agreements were submitted for specific approval by the US authorities*. IATA would submit the agreements to the DOT in accordance with this condition. In addition, IATA’s Board of Governors had determined that any agreement reached at this meeting must not be put into effect prior to its declaration of effectiveness. This ruling was contained in the Provisions for the Conduct of the IATA Traffic Conferences and must be complied with to ensure continued immunity.⁵⁴

⁵⁰ Memorandum from Director, Tariff Affairs and Conferences, IATA, to Members Participating in Tariff Coordinating Conferences, at 4 (Aug. 12, 1997) [QAL-01-194217].

⁵¹ Memorandum from Director, Tariff Affairs and Conferences, IATA, to Members Participating in Tariff Coordinating Conferences, at 4 (Aug. 12, 1997) [QAL-01-194217].

⁵² IATA, Application for Approval of Agreements by the Int’l Air Transport Ass’n to the U.S. Dep’t of Transp., Docket OST-2000-6837-1, at 2 (Jan. 28, 2000) [QAL-01-194611]. *See also* Memorandum from Director, Tariff Affairs and Conferences, IATA, to Members Participating in Tariff Coordinating Conferences, at 1 (Aug. 12, 1997) [QAL-01-194217].

⁵³ Memorandum from Director, Tariff Services, IATA, to Members Participating in Tariff Coordinating Conferences, at 10, 28 (May 29, 1998) [QAL-01-194306].

⁵⁴ Memorandum from Director, Tariff Services, IATA, to Members Participating in Tariff Coordinating Conferences, at 10 (May 29, 1998) [QAL-01-194306] (emphasis added).

33. Moreover, the Airfreight Carriers knew that the “US DoT [] advised that they would not accept filing of this Resolution for approval unless accompanied by economic justification based on current prices which the US carriers were unable to provide.”⁵⁵

34. In June 1999, several Airfreight Carriers met to engage in a “Competition Analysis.”⁵⁶ Representatives of British Airways attended the meeting. Other attendees included representatives from Air Canada, Air France, Cargolux, Cathay Pacific, Emirates, EVA Airways, Japan Airlines, KLM, Korean Air, Lufthansa Cargo, Martinair, SAS, Singapore Air, South African Airways, Swissair, Thai Airways, United Airlines and VARIG.⁵⁷ The analysis included discussions about the competitive situation in the United States.⁵⁸ In addition, the attendees discussed the Fuel Surcharge.

C. Implementation of the Illegal Agreement to Fix Fuel Surcharges

35. On December 20, 1999, after the IATA FPI reached 130, and Otto Meyer of Air France sent an e-mail to representatives of Lufthansa Cargo and Swissair to inform them that “[a]s of Feb 1st, AF [Air France] will levy worldwide a fuel surcharge of EUR 0.10/ USD 0.10 KG., based on actual weight Minimum [sic] shipments are included,”⁵⁹ pursuant to the terms of Resolution 116ss. That same day, Air France announced that it would impose a Fuel Surcharge of USD 0.10 per kilogram effective February 1, 2000 worldwide.⁶⁰

36. On December 21 and 22, 1999, also prior to the submission of Resolution 116ss to DOT, KLM informed British Airways, Air France, Cargolux, Lufthansa Cargo, Martinair and

⁵⁵ Memorandum from Director, Tariff Services, IATA, to Members Participating in Tariff Coordinating Conferences, at 10, 28 (May 29, 1998) [QAL-01-194306].

⁵⁶ E-mail from Sales Manager, Asia & Australia, Lufthansa Cargo (June 23, 1999). [LH_CIV_0002173]

⁵⁷ E-mail from Sales Manager, Asia & Australia, Lufthansa Cargo (June 23, 1999). [LH_CIV_0002173]

⁵⁸ E-mail from Sales Manager, Asia & Australia, Lufthansa Cargo (June 23, 1999). [LH_CIV_0002173]

⁵⁹ E-mail from Otto Meyer, Air France, to Sales Manager for Germany, Lufthansa Cargo, and an employee of Swissair (Dec. 20, 1999) [LH_CIV_0002244].

⁶⁰ Press Release, Air France, *Air France Cargo Implements Fuel Surcharge as from 1st February 2000* (Dec. 20, 1999) [LH_CIV_0001150].

Swissair that KLM would implement the Fuel Surcharge.⁶¹ According to one Cartel member, KLM “just wanted that AF came [sic] out first.”⁶² KLM publicly announced the imposition of a Fuel Surcharge on December 24, 1999,⁶³ still prior to the submission of Resolution 116ss to DOT. On December 28, 1999, Lufthansa Cargo announced it would impose a USD 0.10 per kilogram Fuel Surcharge effective February 1, 2000, worldwide.⁶⁴

37. On January 2, 2000, IATA held a joint meeting of the Cargo and Passenger Tariff Conferences Steering Groups in Geneva, Switzerland, and the participants discussed the Fuel Surcharge.⁶⁵ British Airways attended the meeting.⁶⁶ Other attendees included representatives from the following Cartel members, among others: Air France, Alitalia, Cathay Pacific, Japan Airlines, KLM, Lufthansa Cargo, SAS, South African Airways, United Airlines and VARIG.⁶⁷

38. On January 5, 2000, an internal Qantas email reported, “I have spoken with BA and they are not going with a fuel surcharge ex UK as they have only just increased rates to a number of key destinations and do not want to go out with a further increase.”⁶⁸ As discussed below, British Airways initiated the prescribed Fuel Surcharge several months later, in October 2006.

⁶¹ E-mail from Bernd von Seelen, KLM Cargo, to representatives of Air France, British Airways, Cargolux, Lufthansa Cargo, Martinair and Swissair (Dec. 22, 1999) [LH_CIV_0002245].

⁶² E-mail between Swissair employees (Dec. 21, 1999) [LH_CIV_0000900].

⁶³ Press Release, KLM Cargo, *Fuel Surcharge per February 1, 2000 on Cargo Shipments KLM Cargo and Alitalia Cargo* (Dec. 24, 1999) [LH_CIV_0231576].

⁶⁴ Letter from Regional Manager Sales, Arabian Peninsula and Iran, Lufthansa Cargo, to Customer (Dec. 29, 1999) [QAL-01-194436]; Press Release, Lufthansa Cargo, *Lufthansa Cargo Announces Fuel Surcharge Increase* (Dec. 28, 1999) (unofficial translation) [LH_CIV_0001158]. *See also* Memorandum from Wolfgang Schmitz, Lufthansa Cargo (Jan. 7, 2000) (unofficial translation) [LH_CIV_0001151]; Minutes, Lufthansa Cargo Executive Board Meeting (Dec. 21, 1999) (unofficial translation) [LH_CIV_0001153].

⁶⁵ Report, IATA, Joint Meeting of the Cargo Tariff Conferences Steering Group and the Passenger Tariff Conferences Steering Group (Feb. 2, 2000) [AAC003371].

⁶⁶ Report, IATA, Joint Meeting of the Cargo Tariff Conferences Steering Group and the Passenger Tariff Conferences Steering Group, at 10 (Feb. 2, 2000) [AAC003371].

⁶⁷ Report, IATA, Joint Meeting of the Cargo Tariff Conferences Steering Group and the Passenger Tariff Conferences Steering Group, at 10-11 (Feb. 2, 2000) [AAC003371].

⁶⁸ E-mail exchange between Qantas Airways employees (Jan. 5, 2000) [QAL-01-194473].

39. On January 14, 2000, the Airfreight Carriers received a telex from the IATA Director of Tariff Services that read as follows:

[Resolution 116ss] was not filed with the US DOT. This resolution [was not] submitted to the DOT in 1997 as IATA was *not in a position, [at] that time, to provide the necessary economic justification* that [th]ey required. . . . Accordingly, *Resolution 116ss [ha]s not been approved by the DOT or immunized from the operation of [U.S.] antitrust law.* This is required of all tariff conference [re]solutions before IATA may declare a resolution effective and before [a] tariff conference participant may implement the resolution. These [ar]e standard conditions that the US DOT has attached to the antitrust [im]unity it has provided to IATA[']s tariff conferences for many years.⁶⁹

40. On January 18, 2000, British Airways met with Lufthansa Cargo, Air France, KLM and other Airfreight Carriers serving Japan to devise a way to work around the Japanese government's prohibition of Fuel Surcharges.⁷⁰ The other Airfreight Carriers in attendance included Alitalia, All Nippon Airways, Japan Airlines, and SAS.⁷¹ Because All Nippon Airways was not a regular participant in G8 meetings, the January 18 meeting was referred to as the "G9 (regular G8 + NH [All Nippon]) meeting."⁷² According to Lufthansa Cargo, "a fuel surcharge in all markets is a must. For Japan MOT [Ministry of Transportation] will not authorize a fuel surcharge. Thus, instead an equivalent price increase must take place."⁷³ The "focus" of the meeting "was, obviously, [the] price adjustment plan of each participant."⁷⁴ Each of attendees

⁶⁹ Telex from Director, Tariff Services, IATA, to representatives of Aer Lingus, Ethiopian Airlines, Ariana Afghan Airlines, Iceland Air, Federal Express, Garuda Indonesia, Ghana Airlines, Air Gabon, Iberia, Indian Airlines, Iran Air, Japan Airlines, Adria Airways, JAT Yugoslav Airlines, Korean Air, Air Malta, Kenya Airways, Nippon Cargo Airlines, LAN Cargo, LOT Polish Airlines, Lufthansa Cargo, Swissair and Balkan Bulgarian Airlines (Jan. 2000) [LH_CIV_0104399] (emphasis added).

⁷⁰ See E-mail between Lufthansa Cargo employees (Jan. 19, 2000) [LH_CIV_0239289]; E-mail between Lufthansa Cargo employees (Feb. 11, 2000) [LH_CIV_0239289].

⁷¹ E-mail between Lufthansa Cargo employees (Jan. 19, 2000) [LH_CIV_0239289]; E-mail between Lufthansa Cargo employees (Feb. 11, 2000) [LH_CIV_0239289].

⁷² E-mail between Lufthansa Cargo employees (Jan. 19, 2000) [LH_CIV_0239289].

⁷³ E-mail between Lufthansa Cargo employees (Feb. 11, 2000) [LH_CIV_0239289].

⁷⁴ E-mail between Lufthansa Cargo employees (Jan. 19, 2000) [LH_CIV_0239289].

pledged that it would increase prices for all destination areas originating in airports “Japan-wide.”⁷⁵

41. On January 28, 2000, IATA submitted its application for approval of Resolution 116ss to the DOT.⁷⁶

42. On February 24, 2000, British Airways attended a GCCI meeting at “Dekkers Lounge.”⁷⁷ Other attendees included representatives from Air France, Cargolux, Cathay Pacific, China Airlines, Canadian Airlines International, Japan Airlines, Korean Airlines, Kuwait Airlines, Nippon Cargo Airlines, Northwest Airlines, Saudi Arabian Airlines and United Airlines, among others.⁷⁸ The first item addressed at the February 24 meeting was implementation of the Fuel Surcharge.⁷⁹ The Airfreight Carriers also discussed other competitively sensitive issues, such as capacity and flight frequency.⁸⁰ Another GCCI meeting was scheduled for March 16, 2000, and the group planned to meet on the third Thursday of each month thereafter.⁸¹

43. On March 14, 2000, the DOT denied antitrust immunity for Resolution 116ss, finding that the Fuel Surcharge mechanism was “fundamentally flawed and unfair to shippers and other users of cargo air transportation.”⁸² The DOT concluded that Resolution 116ss would result in “unjustified and unwarranted rate increases” and would “be adverse to the public interest and in violation of [section 41309 of Title 49 of the United States] Code.”⁸³

⁷⁵ E-mail between Lufthansa Cargo employees (Jan. 19, 2000) [LH_CIV_0239289].

⁷⁶ IATA, Application for Approval of Agreements by the Int’l Air Transport Ass’n to the U.S. Dep’t of Transp., Docket OST-2000-6837-1, at 2 (Jan. 28, 2000) [QAL-01-194611].

⁷⁷ Minutes of Monthly Meeting, Global Cargo Carriers, Inc., at 1 (Feb. 24, 2000) [LH_CIV_0240825].

⁷⁸ Minutes of Monthly Meeting, Global Cargo Carriers, Inc., at 1 (Feb. 24, 2000) [LH_CIV_0240825].

⁷⁹ Minutes of Monthly Meeting, Global Cargo Carriers, Inc., at 1 (Feb. 24, 2000) [LH_CIV_0240825].

⁸⁰ Minutes of Monthly Meeting, Global Cargo Carriers, Inc., at 2 (Feb. 24, 2000) [LH_CIV_0240825].

⁸¹ Minutes of Monthly Meeting, Global Cargo Carriers, Inc., at 2 (Feb. 24, 2000) [LH_CIV_0240825].

⁸² Order, U.S. Dep’t of Transportation, Docket OST-2000-6837-2, at 2-3 (Mar. 17, 2000) [QAL-01-194642] (emphasis added).

⁸³ *Id.*

44. On April 4, 2000, the IATA Cargo Committee met in Vancouver, British Columbia, Canada.⁸⁴ British Airways attended the meeting.⁸⁵ During the meeting, IATA provided an update on its FPI and Resolution 116ss.⁸⁶ IATA again noted that the DOT had rejected Resolution 116ss and that, as a result, “IATA’s legal advisors [] recommended that the publication of the index should be suspended.”⁸⁷ “Members, however, felt that [the index] was an extremely useful industry tool.”⁸⁸

45. On April 6, 2000, IATA announced that it would no longer publish the FPI.⁸⁹

46. After IATA ceased publishing its FPI, Lufthansa Cargo began publishing a Lufthansa FPI on its website that was substantially the same as (but with some minor differences so that it did not appear to be identical to) the IATA FPI contained in Resolution 116ss.

47. On September 13, 2000, after discussions and meetings with Cartel members, British Airways informed Cartel members that it would be imposing the Fuel Surcharge effective October 15, 2000, putting its Fuel Surcharge at the same level as the other Cartel members in accordance with the Cartel agreement.⁹⁰

48. On or about January 1, 2001, the Cartel members, including British Airways, increased their Fuel Surcharge to USD 0.15 per kilogram.⁹¹

49. On January 17, 2001, ACCS held a meeting at the Unique Centre Airport in Zurich, Switzerland.⁹² British Airways attended the meeting.⁹³ Other Cartel members in

⁸⁴ Agenda & Documentation, IATA Cargo Committee, 14th Meeting (Apr. 4, 2000) [QAL-01-194664]; Summary of Action, IATA Cargo Committee 14th Meeting (Apr. 4, 2000) [QAL-01-194692].

⁸⁵ Summary of Action, IATA Cargo Committee 14th Meeting, at 11 (Apr. 4, 2000) [QAL-01-194692].

⁸⁶ Summary of Action, IATA Cargo Committee, 14th Meeting, at 10 (Apr. 4, 2000) [QAL-01-194692].

⁸⁷ Summary of Action, IATA Cargo Committee, 14th Meeting, at 10 (Apr. 4, 2000) [QAL-01-194692].

⁸⁸ *Id.*

⁸⁹ Memorandum from Senor Director, Tariff Services, IATA, to Members Participating in Cargo Tariff Coordinating Conferences (Apr. 7, 2000) [QAL-01-194707].

⁹⁰ E-mail between Qantas Airways employees (Sept. 14, 2000) [QAL-01-209053]. *See also* Telex between Qantas Airways employees (Sept. 13, 2000) [QAL-01-194879].

⁹¹ CNS Fax Broadcast, British Airways World Cargo (Dec. 11, 2000) [QAL-01-221800].

attendance included Air Canada, Air France, Cathay Pacific, El Al Israel Airlines, Iberia, KLM, Korean Air, Lufthansa Cargo, Martinair, Singapore Air, South African Airways, Swissair, Thai Airways and United Airlines, among others.⁹⁴ The Fuel Surcharge was discussed.⁹⁵

50. On April 6, 2001, British Airways World Cargo's Cargo Sales Manager for West Japan met with a Lufthansa Cargo executive at Trattoria Ben Venuto for a "business lunch."⁹⁶ The two executives discussed the Fuel Surcharge.⁹⁷

51. On April 18, 2001, a "coffee meeting" was held in Japan.⁹⁸ Cartel members British Airways, Air France, KLM, Lufthansa Cargo, Nippon Cargo and SAS, among others, attended.⁹⁹ The purpose of the meeting was to discuss the status of the Fuel Surcharge for shipments to and from Japan.¹⁰⁰

52. On October 4, 2001, the ACRB, of which British Airways was a member, held a meeting in Jakarta, Indonesia.¹⁰¹ At the meeting the Cartel members discussed the Fuel Surcharge.¹⁰² They also discussed a "market development price" to "avoid undercutting price."¹⁰³

D. The Agreement to Modify the Fuel Surcharge Mechanism and to Adhere to the Modified Mechanism

53. In late 2001, the Lufthansa FPI fell to a level that, under Resolution 116ss, required that the Fuel Surcharge be suspended.

⁹² Minutes, 27th ACCS Meeting (Jan. 17, 2001) [LH_CIV_0007440].

⁹³ Minutes, 27th ACCS Meeting, at 1 (Jan. 17, 2001) [LH_CIV_0007440].

⁹⁴ Minutes, 27th ACCS Meeting, at 1 (Jan. 17, 2001) [LH_CIV_0007440].

⁹⁵ Minutes, 27th ACCS Meeting, at 3 (Jan. 17, 2001) [LH_CIV_0007440].

⁹⁶ Expense Reimbursement Form, Lufthansa Cargo [LH_CIV_0239137].

⁹⁷ Expense Reimbursement Form, Lufthansa Cargo [LH_CIV_0239137].

⁹⁸ E-mail between Lufthansa Cargo employees (Feb. 11, 2001) [LH_CIV_0239277].

⁹⁹ E-mail between Lufthansa Cargo employees (Feb. 11, 2001) [LH_CIV_0239277].

¹⁰⁰ E-mail between Lufthansa Cargo employees (Feb. 11, 2001) [LH_CIV_0239277].

¹⁰¹ Agenda, ACRB Meeting (Oct. 4, 2001) [LH_CIV_0200132].

¹⁰² Agenda, ACRB Meeting (Oct. 4, 2001) [LH_CIV_0200132].

¹⁰³ Agenda, ACRB Meeting (Oct. 4, 2001) [LH_CIV_0200132].

54. On October 26, 2001, British Airways, not wanting to suspend the Fuel Surcharge, called Lufthansa Cargo, the Cartel ring-leader, and stated that British Airways was watching Lufthansa Cargo's FPI "very closely but [British Airways] are concerned that [Lufthansa Cargo] would give up the fuel surcharge soon and that [British Airways] would not be able to argue for a continuation of the surcharge."¹⁰⁴ An internal Lufthansa Cargo e-mail described the discussions with British Airways as follows:

I asked them not to be concerned because we would have to be below 110 for two consecutive weeks and then exit with an announcement...
[British Airways] also wish[es] to stick with the FS as long as possible.¹⁰⁵

55. Thereafter, the Airfreight Carriers agreed to recalibrate the FPI mechanism, so that a Fuel Surcharge would be imposed at lower FPI levels than those to which the Cartel members previously had agreed. The new methodology worked as follows:

- FPI increases above 115 for 2 consecutive weeks: Fuel Surcharge re-imposed at \$0.05/kg.
- FPI increases above 135 for 2 consecutive weeks: Fuel Surcharge adjusted to \$0.10/kg.
- FPI increases above 165 for 2 consecutive weeks: Fuel Surcharge adjusted to \$0.15/kg.
- FPI increases above 190 for 2 consecutive weeks: Fuel Surcharge adjusted to \$0.20/kg.
- FPI falls below 170 for 2 consecutive weeks: Fuel Surcharge reduced to \$0.15/kg.
- FPI falls below 145 for 2 consecutive weeks: Fuel Surcharge reduced to \$0.10/kg.

¹⁰⁴ E-mail from General Manager of Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Oct. 30, 2001) [LH_CIV_0000003].

¹⁰⁵ E-mail from General Manager of Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Nov. 18, 2001) [LH_CIV_0000011].

- FPI falls below 120 for 2 consecutive weeks: Fuel Surcharge reduced to \$0.05/kg.

- FPI falls below 100 for 2 consecutive weeks: Fuel Surcharge suspended.

56. The coordination regarding the introduction of the revised FPIs took various forms, including bilateral and multilateral e-mails and meetings, as well as discussions at trade association meetings across the world. British Airways was involved in these discussions.¹⁰⁶ Indeed, when implementing the adjusted FPI methodology, British Airways was engaged in “intense discussion[s]” with Air France and Lufthansa Cargo, all of which were in agreement in adopting the adjusted FPI.¹⁰⁷

57. In the first quarter of 2002, the revised FPIs of the Cartel members were below 115, so the new \$0.05/kg Fuel Surcharge did not go into effect until the second quarter of 2002.¹⁰⁸ British Airways implemented the \$0.05/kg Fuel Surcharge at the same time as the other Cartel members.¹⁰⁹

58. Lufthansa Cargo estimated the revised methodology would increase the revenue Lufthansa generated from the Fuel Surcharge by EUR 15.9 million between April and September 2002, compared to the amount it would have earned for that same time period had it kept the old methodology in place.¹¹⁰

¹⁰⁶ E-mail from Regional Sales Director for Germany, Lufthansa Cargo, to Wolfgang Plantholt, Air France, and representatives of Air China, Cathay Pacific, Cargolux, Japan Airlines, Korean Air, Singapore Air, South African Airways, Thai Airways, United Airlines and VARIG (Jan. 22, 2002) [LH_CIV_0029865] (certified translation); E-mail from General Manager for Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Jan. 25, 2002) [LH_CIV_0000027] (unofficial translation).

¹⁰⁷ E-mail between Lufthansa Cargo employees (Apr. 13, 2002) [LH_CIV_0007879].

¹⁰⁸ E-mail from General Manager for Pricing, Lufthansa Cargo, to several Lufthansa Cargo employees (Jan. 16, 2002) [LH_CIV_0000315].

¹⁰⁹ Newsflash, British Airways World Cargo, *British Airways World Cargo to Implement Fuel Surcharge* (Apr. 9, 2002) [QAL-01-209152]; E-mail from Jassim Saif, Emirates (Apr. 9, 20002) [LH_CIV_0148256]; Lufthansa Cargo News, *Lufthansa Cargo to introduce Fuel Surcharge of 0.05 euros* (Mar. 28, 2002) [LH_CIV_0042858]; Letter from Senior Vice President of Sales, Lufthansa Cargo, to Partners and Customers (Apr. 9, 2002) [LH_CIV_0030639].

¹¹⁰ Lufthansa Cargo, Presentation, at 1 (June 2003) [LH_CIV_0098938].

59. On May 15, 2002, British Airways attended a meeting in Thailand regarding the Fuel Surcharge.¹¹¹ Other Cartel members in attendance included Air France, Japan Airlines, KLM, Lufthansa Cargo and Qantas Airways.¹¹² The purpose of the meeting was “to discuss the impact of the current fuel surcharge on the Thai perishable exports” and to monitor the Cartel to make sure that the Fuel Surcharge was being applied uniformly.¹¹³ All of the Airfreight Carriers in attendance, including British Airways, “confirmed that the surcharge must apply to all commodities including perishables ex BKK [Bangkok], as it does around the world. otherwise [sic] airlines will look at moving capacity to other stations who can generate higher yields per position etc etc.”¹¹⁴

60. In February 2002, British Airways “launched a major restructuring program – known as ‘Future Size and Shape’ (FSAS).”¹¹⁵ “This programme aimed to substantially reduce BA’s cost base” and did so.¹¹⁶

61. In early September 2002, the FPIs of the Cartel members exceeded the relevant threshold for an increase in the Fuel Surcharge, and there were communications among the Cartel members confirming that they would increase the Fuel Surcharge in accordance with the Cartel agreement.¹¹⁷ For example, the Board of Airline Representatives in India (“BAR (India)”) held meetings on September 12 and 19, 2002, to ensure, among other things, uniform implementation of the Fuel Surcharge “for general cargo to all sectors.”¹¹⁸ It was “the desire of

¹¹¹ E-mail from Qantas Airways to British Airways (May 17, 2002) [QAL-01-214126].

¹¹² E-mail from Qantas Airways to British Airways (May 17, 2002) [QAL-01-214126].

¹¹³ E-mail from Qantas Airways to British Airways (May 17, 2002) [QAL-01-214126].

¹¹⁴ E-mail from Qantas Airways to British Airways (May 17, 2002) [QAL-01-214126].

¹¹⁵ Datamonitor Presentation, British Airways World Cargo, at 4 (2004) [LH_CIV_0194674].

¹¹⁶ *Id.*

¹¹⁷ E-mail between Qantas Airways employees (Sept. 7, 2002) [QAL-01-209256]; E-mail between Qantas Airways employees (Sept. 7, 2002) [QAL-01-195125].

¹¹⁸ Minutes of BAR (India) Cargo Meeting (Sept. 19, 2002) [SIA_CIV_0027245]; Letter from H. Rana to Rakesh Malik, President, ACAAI (Sept. 19, 2002) [SIA_CIV_0027253]. *See also* Class Action Complaint, *Benchmark*

all the members to . . . arrive at a unanimous view” on the proposed Fuel Surcharge increase.¹¹⁹ British Airways attended both meetings.¹²⁰ Other attendees included Cartel members Air Canada, Air France, Air India, Alitalia, Cathay Pacific, El Al Israel Airlines, Emirates, EVA Airways, KLM, Korean Air, Malaysian Airlines System, Saudi Arabian Airlines, Singapore Air, South African Airways, Swiss World Cargo and Thai Airways, among others.¹²¹ Thereafter, British Airways and the other Cartel members increased their Fuel Surcharge to USD 0.10 per kilogram.¹²²

62. On September 20, 2002, British Airways attended an “LCAG” meeting at “Frohsinn in Kloten” restaurant in Switzerland.¹²³ Other attendees included Cartel members Air France, Air Canada, Cathay Pacific, Emirates, Lufthansa Cargo, Singapore Air, Swiss WorldCargo and Thai Airways.¹²⁴ One of the topics discussed was the Fuel Surcharge.¹²⁵

63. On September 30, 2002, representatives of eight major Airfreight Carriers, including Nippon Cargo, Air France, KLM, British Airways, Lufthansa Cargo, ANA, and Japan Airlines, met confidentially in Japan to discuss their long term “status, plans and views regarding

Export Services et al. v. China Airlines Ltd. et al., at 33, 10-CV-639 (JG)(VVP) (E.D.N.Y. Feb. 12, 2010) (describing the same meeting of the BAR (India) Cargo Subcommittee).

¹¹⁹ Minutes, Emergency BAR (India) Meeting (Spt. 12, 2002) [SIA_CIV_0027248].

¹²⁰ Minutes of BAR (India) Meeting (Sept. 19, 2002) [SIA_CIV_0027245]; Minutes, Emergency BAR (India) Meeting (Spt. 12, 2002) [SIA_CIV_0027248]; Letter from H. Rana to Rakesh Malik, President, ACAAI (Sept. 19, 2002) [SIA_CIV_0027253].

¹²¹ Minutes of BAR (India) Meeting (Sept. 19, 2002) [SIA_CIV_0027245]; Minutes, Emergency BAR (India) Meeting (Spt. 12, 2002) [SIA_CIV_0027248].

¹²² Newsflash, *British Airways World Cargo To Increase Fuel Surcharge* (Sept. 6, 2002) [QAL-01-176977]; Lufthansa Cargo News, *Lufthansa Cargo to introduce Fuel Surcharge of 0.10 euros per kilo of actual freight weight on September 23, 2002* (Sept. 5, 2002) [LH_CIV_0031089].

¹²³ E-mail from Angelo Lassandro, IATA, to representatives from Air France, Air Canada, British Airways, Cathay Pacific, Emirates, Iberia, Lufthansa Cargo, Singapore Air, Swiss WorldCargo and Thai Airways (Sept. 6, 2002) [SIA_CIV_0031218].

¹²⁴ E-mail from Angelo Lassandro, IATA, to representatives from Air France, Air Canada, British Airways, Cathay Pacific, Emirates, Iberia, Lufthansa Cargo, Singapore Air, Swiss WorldCargo and Thai Airways (Sept. 6, 2002) [SIA_CIV_0031218].

¹²⁵ E-mail from Angelo Lassandro, IATA, to representatives from Air France, Air Canada, British Airways, Cathay Pacific, Emirates, Iberia, Lufthansa Cargo, Singapore Air, Swiss WorldCargo and Thai Airways (Sept. 6, 2002) [SIA_CIV_0031218].

[the Fuel Surcharge].”¹²⁶ All eight Airfreight Carriers that attended the meeting mutually agreed that there should be “no exceptions” to the imposition of the Fuel Surcharge because “[a]llowing one exception [would] defeat the whole industrial movement. This means, of course, no adjustments in net/net rates [sic], either whole or partial.”¹²⁷ The meeting was “productive” and left the Airfreight Carriers “with more confidence in each other.”¹²⁸ In an effort to prevent cheating, the Airfreight Carriers established “[c]lose hotlines . . . with immediate effect among [the] participants in case of doubt and contradicting/misleading market information.”¹²⁹

64. On the same day, September 30, 2002, Mizuhara Toyoaki of Air France sent an e-mail jointly addressed to British Airways, Alitalia, Japan Airlines, KLM, and Nippon Cargo Airlines regarding the Fuel Surcharge that read as follows:

With regard to movements for implementation of [the Fuel Surcharge] as we discussed yesterday, M. Kamiya[of Cargolux] would be ready to apply it if other carriers positively struggle with taking money without any compensations. He will show his final attitude in [a] meeting on [October 4, 2002].¹³⁰

65. On October 4, 2002, British Airways attended another meeting along with Lufthansa, Japan Airlines, Air France, Nippon Cargo , All Nippon Airways, among others.¹³¹ Most of the attendees, including Nippon Cargo, “reconfirmed implementation of [the Fuel Surcharge] without exception/adjustment.”¹³²

¹²⁶ E-mail between Lufthansa Cargo Employees (Sept. 30, 2002) [LH_CIV_0001210].

¹²⁷ *Id.* [LH_CIV_0001210].

¹²⁸ *Id.* [LH_CIV_0001210].

¹²⁹ *Id.* [LH_CIV_0001210].

¹³⁰ E-mail from Mizuhara Toyoaki, Air France, to representatives of Alitalia, British Airways, Japan Airlines, KLM, Lufthansa Cargo and Nippon Cargo Airlines (Sept. 30, 2002) [LH_CIV_0061711].

¹³¹ E-mail between Lufthansa Cargo Employees (Oct. 4, 2002) [LH_CIV_0059299].

¹³² *Id.* [LH_CIV_0059299].

66. On November 8, 2002, Cartel member Singapore Air hosted a GCCI meeting at the “Dulcinea Coffee Shop.”¹³³ British Airways attended the meeting, and there was discussion about the Fuel Surcharge.¹³⁴

67. On February 12, 2003, British Airways and Cartel members Lufthansa Cargo, KLM, United, and SAS discussed the next Fuel Surcharge. In addition, they discussed a base-rate increase.¹³⁵ An email summarizing the discussions noted that it “would be good if you do not forward this mail.”¹³⁶

68. On February 13, 2003, Air France wrote to British Airways and other Cartel members including KLM, Lufthansa Cargo and Swiss WorldCargo regarding “increasing of FS [Fuel Surcharge.]”¹³⁷ Air France suggested that they “meet briefly to discuss this issue when info collected.”¹³⁸ Lufthansa Cargo responded that, if the FPI exceeded the relevant threshold for one more day, the Fuel Surcharge would be increased effective March 3, 2003, and he also suggested that the group meet to address related local currency issues.¹³⁹ British Airways replied to all that “we have already received an official request from HQ to increase [the Fuel Surcharge] eff[ective] 2MAR to 0.15 EUR . . . so I am more than happy to meet and discuss that issue with

¹³³ Agenda, Global Cargo Carriers, Inc. (Nov. 8, 2002) [LH_CIV_0240798].

¹³⁴ Agenda, Global Cargo Carriers, Inc. (Nov. 8, 2002) [LH_CIV_0240798].

¹³⁵ E-mail from General Manager for Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Feb. 12, 2003) (unofficial translation) [LH_CIV_0000101];

¹³⁶ E-mail from General Manager for Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Feb. 12, 2003) (unofficial translation) [LH_CIV_0000101]

¹³⁷ E-mail from Predrag Mladenovic, Air France, to representatives of Austrian Airlines, British Airways, Czech Airlines, KLM, Lufthansa Cargo and Swiss WorldCargo (Feb. 13, 2003) [LH_CIV_0006398].

¹³⁸ E-mail from Predrag Mladenovic, Air France, to representatives of Austrian Airlines, British Airways, Czech Airlines, KLM, Lufthansa Cargo and Swiss WorldCargo (Feb. 13, 2003) [LH_CIV_0006398].

¹³⁹ E-mail from Lufthansa Cargo to representatives of Air France Austrian Airlines, British Airways, Czech Airlines, KLM, and Swiss WorldCargo (Feb. 13, 2003) [LH_CIV_0006398].

you.”¹⁴⁰ British Airways also confirmed its intent to increase the Fuel Surcharge through direct communication with Lufthansa Cargo and other Airfreight Carriers.¹⁴¹

69. Later that day, British Airways announced that it would increase its Fuel Surcharge to USD 0.15 per kilogram effective on March 2, 2003.¹⁴² Following British Airways’ announcement, Lufthansa Cargo noted that “BA [British Airways] has moved forward. As planned, we [Lufthansa Cargo] will follow in due course.”¹⁴³ Four days later, on February 17, 2003, Lufthansa Cargo announced that it would increase its Fuel Surcharge by USD 0.05 per kilogram to USD 0.15 per kilogram effective March 3, 2003.¹⁴⁴

70. On February 14, 2003, British Airways met with a Lufthansa Cargo executive for a “[b]usiness lunch” at Trattoria Ben Venuto to discuss, among other things, the forthcoming “fuel price increase.”¹⁴⁵

71. On February 17, 2003, Kachornsak Vongsakthavora, the Chairman of the Airline Cargo Business Association of Thailand, sent a letter to British Airways, Air New Zealand, All Nippon Airlines, Nippon Cargo, Lufthansa Cargo, Qantas, Qatar Air, Royal Jordanian Airlines, SAS, Saudi Airlines, Singapore Air, South African Airways, SriLankan Airlines, Thai Airways

¹⁴⁰ E-mail from Marek Vransky, British Airways World Cargo, to representatives of Air France, Austrian Airlines, Czech Airlines, KLM, Lufthansa Cargo and Swiss WorldCargo (Feb. 13, 2003) [LH_CIV_0006398].

¹⁴¹ E-mail between Lufthansa Cargo employees (Feb. 13, 2003) [LH_CIV_0050851]; E-mail from General Manager of Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Feb. 12, 2003) [LH_CIV_0000101]; Email between Swiss WorldCargo employees (Jan. 24, 2003) (certified translation) [LH_CIV_0005441]; E-mail from Steve Cassidy, Vice President of Asia Pacific & Middle East Region, British Airways World Cargo, to a Qantas Airways employee (Feb. 13, 2003) [QAL-01-195187].

¹⁴² Newsflash, British Airways World Cargo, *British Airways World Cargo to Increase Fuel Surcharge* (Feb. 13, 2003) [QAL-01-195187]; E-mail between Qantas Airways employees (Feb. 14, 2003) [QAL-01-195180]; E-mail between Qantas Airways employees (Feb. 14, 2003) [QAL-01-195198]. *See also* E-mail from General Manager of Pricing, Lufthansa Cargo, to Kenneth Marx, SAS Cargo (Feb. 17, 2003) [LH_CIV_0040154]; E-mail from General Manager of Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Feb. 12, 2003) [LH_CIV_0000101].

¹⁴³ E-mail from General Manager of Pricing, Lufthansa Cargo, to Lufthansa Cargo employees (Feb. 13, 2003) [LH_CIV_0030135]. *See also* E-mail from General Manager for Pricing, Lufthansa Cargo, to Kenneth Marx, SAS, and Eva Ohlson, SAS (Feb. 13, 2003) [LH_CIV_0051478] (“BA ANNOUNCED ALREADY INCREASE for [March 2, 2003]!!!!1 . . . Therefore we will go ahead and do it accordingly.”).

¹⁴⁴ E-mail between Lufthansa Cargo employees (Feb. 17, 2003) [LH_CIV_0001240].

¹⁴⁵ Expense Reimbursement Form, Lufthansa Cargo [LH_CIV_0239137].

and United Airlines, among others, as a “guideline for fuel surcharge adjustment.”¹⁴⁶ The letter requested “usual cooperation” of the Cartel members and “having the same practice locally” in “adjusting the current fuel surcharge amount imposed to the next appropriate value” of USD 0.15 per kilogram with effective date of March 1, 2003.¹⁴⁷ The next day, Nippon Cargo publicly announced that its Fuel Surcharge would go up to USD 0.15 per kilogram effective on March 1, 2003.¹⁴⁸

72. On February 18, 2003, the President of ACCS sent an email concerning “fuel surcharges” to British Airways, Air Canada, Air China, Air France, Asiana Airlines, Cargolux, Cathay Pacific, China Airlines, El Al Israel Airlines, Emirates Airlines, Japan Airlines, Korean Air, LAN Cargo, Lufthansa Cargo, Malaysian Airlines System, Martinair, SAS, Saudi Arabian Airlines, and Singapore Air, among others. The email stated that “[h]eavy discussion have [sic] started in regard to the Fuel Surcharge” and that the carriers should “follow our home carrier [Swiss WorldCargo] as well as some main carriers” in implementing an increase in the Fuel Surcharge from USD 0.10 per kilogram to USD 0.15 per kilogram effective March 3, 2003.¹⁴⁹

73. On March 3, 2003, the members of the Cargo Subcommittee of BAR (India), including Cartel members British Airways, Lufthansa Cargo, and Air France formed a “sub-committee . . . to review the fuel price index on a monthly basis” and “inform all airlines” so as to coordinate the timing of Fuel Surcharge adjustments.¹⁵⁰

¹⁴⁶ Letter from Kachornsak Vongsakthavara, ACBA Chairman, to ACBA Members, including Nippon Cargo, attached to E-mail between Qantas Employees (Feb. 19, 2003) [QAL-01-195213].

¹⁴⁷ *Id.*

¹⁴⁸ See, e.g., Customer Newsletter, Nippon Cargo (Feb. 18, 2003) [SIA_CIV_0023961].

¹⁴⁹ E-mail from Andy Berger, President, ACCS, to ACCS members (Feb. 18, 2003) [SIA_CIV_0000144]; Class Action Complaint, *Benchmark Export Services et al. v. China Airlines Ltd. et al.*, at 33, 10-CV-639 (JG)(VVP) (Feb. 12, 2010).

¹⁵⁰ Minutes, Meeting of the Cargo Subcommittee, BAR (India) (Mar. 3, 2003) [SIA_CIV_0027226]; E-mail from Vashumathi Jayaraman, Air India, to BAR (India) Cargo Subcommittee members (Apr. 28, 2004) [SIA_CIV_0027194].

74. On March 4, 2003, Alex Heitmann of Lufthansa Cargo wrote in an internal Lufthansa Cargo e-mail regarding the Fuel Surcharge, stating that “at BA, I am in contact with the Sales Manager for Sales Europe and Africa, who is also in charge of pricing and surcharges,” and Mr. Heitmann “made it clear to [KLM and British Airways] that [Lufthansa Cargo] would trigger the next level of the fuel surcharge in the event that the [FPI] level of 190 is exceeded” with the “[a]nnouncement on March 10, 2003 and implementation as of March 24, 2003 – 14 days later.”¹⁵¹ Lufthansa Cargo’s contact at British Airways for this discussion was the Senior Manager of Sales and Marketing, who reported directly to Gareth Kirkwood, British Airways’ Managing Director.¹⁵² British Airways informed Lufthansa Cargo that British Airways planned to implement the same increase as Lufthansa Cargo.¹⁵³

75. On March 14, 2003, the IATA Cargo Tariff Conferences Steering Group met in Long Beach, California.¹⁵⁴ British Airways attended.¹⁵⁵ The Airfreight Carriers in attendance exchanged information regarding implementation of the Fuel Surcharge increase.¹⁵⁶

76. On March 24, 2003, Swiss WorldCargo, a Cartel member now owned by Lufthansa, met with British Airways, Lufthansa, Air France and KLM at an IATA meeting in order to coordinate the Fuel Surcharge increase. According to an internal Swiss WorldCargo email, “Beat is currently meeting with competitors at the IATA meeting” and “we will increase

¹⁵¹ E-mail from General Manager for Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Mar. 4, 2003) [LH_CIV_0001319] (unofficial translation) [LH_CIV_0001319].

¹⁵² E-mail from General Manager of Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Mar. 4, 2003) (unofficial translation) [LH_CIV_0001319].

¹⁵³ E-mail from General Manager for Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Mar. 11, 2003) [LH_CIV_0001326] (unofficial translation).

¹⁵⁴ Report, IATA Cargo Tariff Conferences Steering Group, 14th Meeting (Mar. 14, 2003) [LH_CIV_0005498].

¹⁵⁵ Report, IATA Cargo Tariff Conferences Steering Group, 14th Meeting, at 9 (Mar. 14, 2003) [LH_CIV_0005498].

¹⁵⁶ E-mail between Swiss WorldCargo employees (Mar. 13, 2003) [LH_CIV_0005480].

the Surcharge as soon as possible in line with competition.”¹⁵⁷ British Airways confirmed that it would be raising its Fuel Surcharge.¹⁵⁸

77. Pursuant to the above communications, British Airways, Lufthansa Cargo, and the other Cartel members implemented the Fuel Surcharge increase to USD 0.20 per kilogram—in a coordinated and parallel manner—effective in late March 2003.¹⁵⁹ British Airways implemented the increase on March 27, 2003.¹⁶⁰ At the same time they announced the Fuel Surcharge increase, British Airways and the other Airfreight Carriers announced the two new FPI tiers to which the Cartel members had agreed.¹⁶¹

78. The modified Fuel Surcharge mechanism had not envisioned the Fuel Surcharge exceeding USD 0.20 per kilogram. Accordingly, once the Cartel members had announced their increases to USD 0.20 per kilogram, British Airways approached Lufthansa Cargo and inquired “whether additional stages should be announced.”¹⁶² Lufthansa Cargo responded that British Airways is “obviously keen to do so!”¹⁶³ Thereafter, Lufthansa Cargo established two new tiers. In an internal Lufthansa email, a Lufthansa executive wrote, “I have told the Brits where we

¹⁵⁷ Swiss WorldCargo email chain (March 16, 2003) [LH_CIV_0005480].

¹⁵⁸ Id.

¹⁵⁹ Press Release, British Airways World Cargo, *British Airways World Cargo Increases Fuel Surcharge* (Mar. 13, 2003) [LH_CIV_0001173]; Press Release, Lufthansa Cargo, *Continuing Rise in Crude Oil Prices Leads to New Increase in Fuel Surcharge* (Mar. 10, 2003) [LH_CIV_0000370]; E-mail between Swiss WorldCargo employees (Mar. 16, 2003) [LH_CIV_0005480]; Chart, Lufthansa Cargo, *Carrierzuschläge* (undated) [LH_CIV_0031564]; Chart, Lufthansa Cargo, *Carrierzuschläge* (undated) [LH_CIV_0031564]; Press Release, KLM Cargo, *KLM Cargo increases fuel surcharge to 0.20 cents, effective March 24, 2003* (Mar. 11, 2003) [LH_CIV_0051398]; E-mail between Lufthansa Cargo employees (Mar. 14, 2003) (unofficial translation) [LH_CIV_0001687]; E-mail from General Manager of Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Mar. 11, 2003) (unofficial translation) [LH_CIV_0001326]; E-mail from General Manager of Pricing, Lufthansa Cargo, to Kevin Poh, Singapore Air (Apr. 26, 2004) [LH_CIV_0000049]; E-mail from Mike Fuchs, Martinair, to ACCS Members (May 3, 2001) [LH_CIV_0000808].

¹⁶⁰ Press Release, British Airways World Cargo, *British Airways World Cargo Increases Fuel Surcharge* (Mar. 13, 2003) [LH_CIV_0001173].

¹⁶¹ Press Release, British Airways World Cargo, *British Airways World Cargo Increases Fuel Surcharge* (Mar. 13, 2003) [LH_CIV_0001173].

¹⁶² E-mail from General Manager of Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Mar. 11, 2003) (certified translation) [LH_CIV_0000039].

¹⁶³ E-mail from General Manager of Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Mar. 11, 2003) (certified translation) [LH_CIV_0000039].

were going to set our [price] points and then they calculated their points on that basis.”¹⁶⁴ The email noted that the FPIs of British Airways and Lufthansa Cargo “always coincide[d]” in Fuel Surcharge increases and decreases, although the indexes look slightly different.¹⁶⁵ British Airways’ Senior Vice President of Global Sales and Marketing, who pled guilty to price fixing, was integrally involved in establishing the additional tiers.¹⁶⁶

79. On March 27, 2003, British Airways attended a GCCI meeting at the Dulcinea Coffee Shop and Restaurant, along with China Airlines, Emirates, Korean Air, Northwest Airlines and Saudi Arabian Airlines.¹⁶⁷ One of the principal items on the agenda was a “Fuel Surcharge Update.”¹⁶⁸ The Airfreight Carriers also discussed various routes and engaged in a “Market Update.”¹⁶⁹

80. On April 1, 2003, as the price of jet fuel was dropping, British Airways met with Cartel members Air France, Air Canada, Cathay Pacific, EVA Airways, Japan Airlines, KLM, Korean Air and Lufthansa Cargo to discuss the next adjustment to the Fuel Surcharge.¹⁷⁰ Thereafter, the Cartel members reduced their Fuel Surcharge in a coordinated manner to USD 0.15 per kilogram effective on or about April 10, 2003.¹⁷¹

¹⁶⁴ E-mail from General Manager of Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Mar. 14, 2003) (unofficial translation) [LH_CIV_0001173].

¹⁶⁵ E-mail from General Manager of Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Mar. 14, 2003) (unofficial translation) [LH_CIV_0001173].

¹⁶⁶ E-mail from General Manager of Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Mar. 14, 2003) (unofficial translation) [LH_CIV_00001173].

¹⁶⁷ Agenda, GCCI Meeting (Mar. 27, 2003) [LH_CIV_0240795].

¹⁶⁸ Agenda, GCCI Meeting (Mar. 27, 2003) [LH_CIV_0240795].

¹⁶⁹ Agenda, GCCI Meeting (Mar. 27, 2003) [LH_CIV_0240795].

¹⁷⁰ E-mail between Lufthansa Cargo employees (Apr. 2, 2003) [LH_CIV_0001242].

¹⁷¹ Press Release, British Airways, *British Airways World Cargo Decreases Fuel Surcharge* (Apr. 10, 2003) [LH_CIV_0001176]. See also Customer Newsletter, KLM Cargo, *KLM Cargo reduces fuel surcharge from Euro 0.20 to Euro 0.15, effective April 7, 2003* (Apr. 2, 2003) [LH_CIV_0031547]; Press Release, Lufthansa Cargo, *Reduce Fuel Surcharge* (Apr. 8, 2003) [QAL-01-195302]; E-mail from Lufthansa Cargo to a distribution list (Apr. 8, 2003) [QAL-01-195310]; E-mail from General Manager of Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Apr. 11, 2003) [LH_CIV_0001176].

81. On April 11, 2003, an internal Lufthansa Cargo email noted that British Airways “behaves correctly” which “seems to bear fruits.”¹⁷²

82. On or about April 14, 2003, the Airfreight Carriers established “a questionnaire to be complete by [IATA] members for future fuel surcharge mailings” that was to be used for the “regular distribution of surcharge summaries.”¹⁷³ British Airways was a member of the IATA Local Customer Advisory Group (“LCAG”) that developed the questionnaire.¹⁷⁴

83. In early May 2003, the Airfreight Carriers, including British Airways, again in a coordinated and parallel fashion (with staggered effective dates) and pursuant to the Cartel agreement, reduced the Fuel Surcharge by another USD 0.05 per kilogram to USD 0.10 per kilogram.¹⁷⁵

84. On May 19, 2003, members of the BLACKS (British Airways, Lufthansa, Air France, Cargolux, KLM, and Swiss World) initiative, who were Cartel leaders, met for four hours and discussed Fuel Surcharges.¹⁷⁶

85. On November 26, 2003, as the FPIs were increasing, Swiss WorldCargo wrote in an internal email that it had been in contact with “head of BA [British Airways], AF [Air France], KL [KLM], and LH [Lufthansa]” and that they will “be waiting for next week” before announcing an increase the Fuel Surcharge. The delay was because Lufthansa Cargo did not

¹⁷² E-mail from General Manager of Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Apr. 11, 2003) [LH_CIV_0001176].

¹⁷³ Meeting Summary Record, IATA Local Customer Advisory Group (LCAG), at 1 (Apr. 14, 2003) [LH_CIV_0007165].

¹⁷⁴ Meeting Summary Record, IATA Local Customer Advisory Group (LCAG), at 1 (Apr. 14, 2003) [LH_CIV_0007165].

¹⁷⁵ Press Release, British Airways World Cargo, *British Airways World Cargo To Decrease Fuel Surcharge* (Apr. 24, 2003) [SIA_CIV_0004274]. See also Press Release, KLM Cargo, *KLM Cargo reduces fuel surcharge and adjusts Middle East network* (Apr. 25, 2003) [SIA_CIV_0037969]; Press Release, Martinair Cargo, *Martinair Reduces Fuel Surcharge* (Apr. 29, 2003) [SIA_CIV_0037977]; Press Release, Air France Cargo, *Fuel Surcharge* (May 1, 2003) [SIA_CIV_0037979]; E-mail from Michael Conen, American Airlines, to ACCS members (Apr. 25, 2003) [LH_CIV_0005531]; E-mail from Andy Berger, MAS Cargo, to ACCS members (Apr. 25, 2003) [LH_CIV_0005531].

¹⁷⁶ E-mail from a Lufthansa Cargo employee to P. Morvan, Air France, and Peter Miebies, KLM, as well as representatives of British Airways, Cargolux and Swiss WorldCargo (May 12, 2003) [LH_CIV_0007186].

want to increase the Fuel Surcharge at the same time it was reducing some base rates because that could look “very untrustworthy to their customers.”¹⁷⁷

86. The following day, November 27, 2003, British Airways and Lufthansa Cargo held discussions about the FPIs and the Fuel Surcharge.¹⁷⁸

87. The following week, on December 4, 2003, the Airfreight Carriers, including British Airways, announced the Fuel Surcharge increase to USD 0.15 per kilogram.¹⁷⁹ Lufthansa Cargo’s General Manager of Pricing specifically noted that he had coordinated the increase in the Fuel Surcharge with British Airways, American Airlines, Cargolux, Japan Airlines, KLM and SAS.¹⁸⁰

88. In furtherance of the coordination in November and December 2003, and pursuant to the Cartel Agreement, the Airfreight Carriers, including British Airways, increased the Fuel Surcharge by USD 0.05 per kilogram to USD 0.15 per kilogram. The effective dates of the increase were slightly staggered to disguise the Cartel, with Lufthansa Cargo and British Airways implemented the increase effective December 18,¹⁸¹ Martinair December 19,¹⁸² KLM January 1,¹⁸³ Air France January 15,¹⁸⁴ and Air Canada on January 19.¹⁸⁵

¹⁷⁷ See, e.g., E-mail between Swiss WorldCargo employees (Nov. 26, 2003) [SIA_CIV_0000129].

¹⁷⁸ See, e.g., E-mail from General Manager of Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Nov. 28, 2003) (certified translation) [LH_CIV_0050752].

¹⁷⁹ See, e.g., E-mail from Senior Vice President of Marketing, Lufthansa Cargo, to several Lufthansa Cargo employees (Dec. 4, 2003) (unofficial translation) [LH_CIV_0000042]; E-mail between Lufthansa Cargo employees (Dec. 5, 2003) [LH_CIV_0157026]; E-mail between Qantas Airways employees (Dec. 5, 2003) (noting that Qantas had spoken to Martinair about increasing the Fuel Surcharge) [QAL-01-195434]; E-mail between Qantas Airways employees (Dec. 5, 2003) [QAL-01-195433].

¹⁸⁰ E-mail from General Manager of Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Dec. 4, 2003) [LH_CIV_0000042]. See also E-mail between Lufthansa Cargo employees (Dec. 11, 2003) [LH_CIV_0001197]; E-mail between Lufthansa Cargo employees (Dec. 4, 2003) [LH_CIV_0000042].

¹⁸¹ E-mail between Qantas Airways employees (Dec. 5, 2003) [QAL-01-195434].

¹⁸² Press Release, *Martinair Cargo Increases Fuel Surcharge* (Dec. 8, 2003) [SIA_CIV_0038106].

¹⁸³ Press Release, *KLM Cargo increases fuel surcharge to Euro 0.15* (Dec. 16, 2003) [LH_CIV_0159207].

¹⁸⁴ E-mail between Swiss WorldCargo employees (Dec. 23, 2003) [LH_CIV_0005622].

¹⁸⁵ E-mail between Lufthansa Cargo employees (Jan. 12, 2004) [LH_CIV_0050736].

89. On March 11, 2004, the BLACKS group, including British Airways, met in Singapore to monitor the Fuel Surcharges, and they “agreed” to “harmonisation [sic] between the states” and on other “items which required [sic] to be solved.”¹⁸⁶ One of the attendees noted that “[a]s a group, we have to make it or die.”¹⁸⁷

90. On April 22, 2004, British Airways, Air France, KLM, Cathay Pacific, Japan Air Cargo, Malaysia, and Qantas, among other Airfreight Carriers, attended a meeting of the Singapore BAR CSC and discussed the Fuel Surcharge.¹⁸⁸

91. Later in April 2004, the FPIs exceeded the next agreed-upon threshold, triggering communications among the Cartel members, including British Airways, regarding the next increase.¹⁸⁹ A Lufthansa Cargo executive stated in an internal email that he had brought British Airways and other Cartel members “on course.”¹⁹⁰ British Airways confirmed to other Cartel members that it would be increasing its Fuel Surcharge to USD 0.20 effective May 13, 2004.¹⁹¹ The Airfreight Carriers’ then raised their Fuel Surcharge in parallel fashion to USD 0.20.¹⁹²

¹⁸⁶ E-mail from Martine Lamandè, Direction Operations & Logistics, Air France Cargo, to General Manager, Process & Claims, Swiss WorldCargo (Mar. 30, 2003) [LH_CIV_0006805].

¹⁸⁷ E-mail from Martine Lamandè, Direction Operations & Logistics, Air France Cargo, to General Manager, Process & Claims, Swiss WorldCargo (Mar. 30, 2003) [LH_CIV_0006805].

¹⁸⁸ Minutes, Singapore BAR CSC Meeting, at 3 (Apr. 22, 2004) [LH_CIV_0148205].

¹⁸⁹ E-mail between Qantas Airways employees (Apr. 26, 2004) [QAL-01-195475]; E-mail between Qantas Airways employees (Apr. 26, 2004) [QAL-01-195475]; E-mail from Matthew Kemp, British Airways, to various Airfreight Carriers (Apr. 28, 2004) [QAL-01-209412] (“On Thursday 29th April we are announcing to our customers that the fuel surcharge is increasing to GBP0.12/kg, USD0.20/kg, EUR0.20/1cg or local currency equivalent, with effect from 13th May 2004.”).

¹⁹⁰ Internal BA email (May 19, 2004) [LH_CIV_000047].

¹⁹¹ E-mail between Qantas Airways employees (Apr. 26, 2004) [QAL-01-195475].

¹⁹² See Lufthansa Cargo News, *Lufthansa Cargo increases fuel surcharge* (Apr. 26, 2004) [LH_CIV_0043016]; Press Release, KLM Cargo, *KLM Cargo increases fuel surcharge to GBP 0.13* (Apr. 29, 2004) [SIA_CIV_0037986]; Press Release, Martinair Cargo, *Martinair Cargo increases its Fuel Surcharge* (Apr. 29, 2004) [SIA_CIV_0037983]; Press Release, *Saudi Arabian Airlines Fuel Surcharge Increase* (Apr. 29, 2004) [SIA_CIV_0037987]; E-mail from Matthew Kemp, British Airways (Apr. 28, 2004) [QAL-01-209412].

92. On May 19, 2004, Lufthansa Cargo notified other Cartel members, including British Airways, of two new Fuel Surcharge tiers.¹⁹³ The email instructed the recipients to “please delete.”¹⁹⁴

93. On May 28, 2004, British Airways attended a meeting of the Board of Airline Representatives in Indonesia and discussed a Fuel Surcharge increase with Cartel members Lufthansa Cargo, Air France, Cathay Pacific, China Airlines, EVA Airways, Japan Airlines, KLM, Qantas Airways and Singapore Airlines.¹⁹⁵

94. Shortly after the Cartel members announced the increase to USD 0.20 per kilogram, the FPIs moved above the next threshold, touching off additional communications among the Cartel members regarding the Fuel Surcharge,¹⁹⁶ and British Airways and Lufthansa Cargo conferred about increasing the Fuel Surcharge.¹⁹⁷ British Airways also participated in an “extraordinary” meeting of the Singapore BAR CSC on May 28, 2004, to facilitate the implementation of the next Fuel Surcharge increase.¹⁹⁸

95. Pursuant to these discussions and agreements, British Airways and the other Cartel agreement increased the Fuel Surcharge—in a coordinated and parallel fashion—to USD 0.25 per kilogram effective in June 2004.¹⁹⁹ Prior to making a public announcement, British Airways informed other Cartel Members about the Fuel Surcharge increase.²⁰⁰

¹⁹³ E-mail from General Manager of Pricing, Lufthansa Cargo, to Lufthansa Cargo employee (May 19, 2004) [LH_CIV_0000047].

¹⁹⁴ E-mail from General Manager of Pricing, Lufthansa Cargo, to Lufthansa Cargo employee (May 19, 2004) [LH_CIV_0000047].

¹⁹⁵ Minutes, BARINDO meeting, at 1 (May 28, 2004) [LH_CIV_0200022].

¹⁹⁶ E-mail from General Manager for Pricing, Lufthansa Cargo, to a Lufthansa Cargo employee (May 19, 2004) [LH_CIV_0000047]; E-mail from General Manager of Pricing, Lufthansa Cargo (May 14, 2004) [SIA_CIV_0002146]; E-mail between Swiss WorldCargo employees (May 15, 2004) [SIA_CIV_0002146]; Minutes, Singapore BAR CSC Meeting, at 3 (Apr. 22, 2004) [LH_CIV_0148205]; E-mail between Lufthansa Cargo employees (June 11, 2004) [LH_CIV_0189015].

¹⁹⁷ E-mail between Lufthansa Cargo employees (June 11, 2004) [LH_CIV_0189015].

¹⁹⁸ Minutes, Singapore BAR (Cargo) Subcommittee Meeting, at 3 (Apr. 22, 2004) [LH_CIV_0148205].

¹⁹⁹ Newsflash, British Airways World Cargo (May 27, 2004) [QAL-01-209436]; E-mail between Lufthansa Cargo employees (June 11, 2004) [LH_CIV_0189015]; E-mail from General Manager of Pricing, Lufthansa Cargo, to

96. By mid-June 2004, the FPIs were increasing quickly, and it soon exceeded the top threshold. However, Lufthansa Cargo was concerned that increasing the Fuel Surcharge so quickly might give rise to customer suspicion. Lufthansa Cargo persuaded British Airways and other Cartel members to delay the increase.²⁰¹ British Airways at first resisted any delay of the next increase because, according to a Lufthansa internal email, “they are chasing every cent.”²⁰²

97. On July 23, 2004, British Airways attended a meeting of the Singapore BAR CSC held at Singapore Air Cargo’s sales conference room.²⁰³ Other attendees included Cartel members Air France, EVA Airways, China Airlines, Cargolux, Cathay Pacific, Japan Airlines, KLM, Korean Air, Nippon Cargo Airlines and United Airlines.²⁰⁴ One of the “matters arising” was the Fuel Surcharge.²⁰⁵ The “Chairman enquired if there ha[d] been any revisions to the fuel surcharges since the last survey Nil revisions were raised . . . from all present.”²⁰⁶ The Cartel members discussed the importance of “cooperation,” “transparency,” and having in place “a system of tracking fuel indices that will trigger off a prompt for the carriers to raise the level of fuel surcharge [sic].”²⁰⁷ After the meeting, the Cartel members, including British Airways,

Lufthansa Cargo employees (June 7, 2004) [LH_CIV_0031917]. *See also* Press Release, American Airlines Cargo, *American Airlines Cargo Division Announces Increase in Fuel Surcharge* (May 27, 2004) [LH_CIV_0006428]; Press Release, Martinair Cargo, *Martinair increases Fuel Surcharge* (May 27, 2004) [SIA_CIV_0038013]; E-mail from General Manager of Pricing, Lufthansa Cargo, to Kevin Poh, Singapore Air (May 19, 2004) [LH_CIV_0000049]; E-mails between ACCS Members (Apr. 30, 2004) [LH_CIV_0000800]; E-mail from Walter Burri, Singapore Air to ACCS members (June 3, 2004) [LH_CIV_0005753].

²⁰⁰ E-mail from Matthew Kemp, British Airways, to various Airfreight Carriers (May 26, 2004) [QAL-01-209436].

²⁰¹ *See, e.g.*, E-mail from a Lufthansa Cargo employee to General Manager for Pricing, Lufthansa Cargo (June 21, 2004) [LH_CIV_0001180]; Press Release, KLM Cargo, *Fuel surcharge remains 0.20 Euro – KLM Cargo adapts fuel surcharge mechanism* (June 25, 2004) [LH_CIV_0000057]; Chart, Lufthansa Cargo, *Fuel Surcharge Competitor Overview* (June 28, 2004) [LH_CIV_0000492].

²⁰² E-mail from a Lufthansa Cargo employee to General Manager of Pricing, Lufthansa Cargo (June 21, 2004) [LH_CIV_0001180].

²⁰³ Minutes, Singapore BAR (Cargo) Subcommittee Meeting (July 23, 2004) [LH_CIV_0148180].

²⁰⁴ Minutes of the Singapore BAR CSC Meeting, at 1 (July 23, 2004) [LH_CIV_0148180].

²⁰⁵ Minutes of the Singapore BAR CSC Meeting, at 3 (July 23, 2004) [LH_CIV_0148180].

²⁰⁶ Minutes, Singapore BAR CSC meeting, at 3 (Jul. 23, 2004) [LH_CIV_0148180].

²⁰⁷ Minutes of the Singapore BAR CSC Meeting, at 3 (July 23, 2004) [LH_CIV_0148180].

affirmed their agreement by continuing their cooperation and transparency in implementing the Cartel.

98. The FPIs rose again in late August 2004, and Lufthansa Cargo again decided to delay the Fuel Surcharge increase because of the “exceptional situation,” but at the same time made clear that “in principle [] we keep the current system in place.”²⁰⁸ Lufthansa remained in close touch with other Airfreight Carriers during this time.²⁰⁹

99. On August 25, 2004, Lufthansa engaged in “a discreet round calls/talks [sic]” with other Cartel members, including British Airways, about a future increase in the Fuel Surcharge and agreed that “the market is well coordinated.”²¹⁰ According to a Lufthansa e-mail, “[a]ll agree, including JL and KZ, that for the sake of the intended date, it is crucial that market communication be kicked off by/on 01 SEP.”²¹¹ The agreed upon increase to \$0.30/kg became effective between late September and mid-October 2004. The precise implementation dates were staggered to conceal the Cartel.²¹² At the same time that they announced the Fuel Surcharge increase to USD 0.30 per kilogram, the Cartel leaders announced two new tiers in

²⁰⁸ File Note of a Lufthansa Cargo Employee (Sept. 1, 2004) [LH_CIV_0000060] (unofficial translation). *See also* Press Release, *Lufthansa Cargo Suspends Fuel Surcharge Increase* (Sept. 3, 2004) [QAL-01-195539] (unofficial translation); E-mail between Qantas Airways Employees (Aug. 25, 2004) [QAL-01-209484].

²⁰⁹ E-mail between Lufthansa Cargo Employees (Aug. 31, 2004) [LH_CIV_0001940] (“AF [a]nd KL[M] today have not yet reached a decision about what they will do. [They] want to give me an update about the decision tomorrow (Tue). We [Lufthansa Cargo] have signaled, however, that we would follow. . . . We should definitely try to convince AF/KLM to be the first mover. [Lufthansa Cargo] will follow up once again tomorrow [on that].”); E-mail from Senior Manager of Pricing, Lufthansa Cargo, General Manager for Pricing, Lufthansa Cargo (June 21, 2004) [LH_CIV_0001180].

²¹⁰ E-mail between Lufthansa Cargo Employees (Aug. 26, 2004) [LH_CIV_0061822].

²¹¹ *Id.*

²¹² E-mail from Walter Burri, Singapore Air, to ACCS Members (Sept. 24, 2004) [LH_CIV_0005820]. *See also* Chart, All Nippon Airways, *Fuel Surcharge Up Date (From TC1)*, at 3 (undated) [ANA00002093]; Press Release, *Air Canada Fuel Surcharge ab 08.10.2004* (Sept. 27, 2004) [SIA_CIV_0014322]; Press Release, *KLM Cargo Increases Fuel Surcharge to Euro 0.30 Effective September 29th* (Sept. 15, 2004) [LH_CIV_0029858]; Press Release, *Air France Cargo Erhöht Fuel Surcharge* (Sept. 21, 2004) [LH_CIV_0158260]; Press Release, *Martinair Cargo Increases Fuel Surcharge* (Sept. 21, 2004) [SIA_CIV_0038047]; Press Release, *British Airways World Cargo to Increase Fuel Surcharge* (Sept. 24, 2004) [SIA_CIV_0038050]; Chart, *Fuel Surcharge Update* (Dec. 1, 2004) [LH_CIV_0241204].

preparation for increases in the Fuel Surcharge to USD 0.35 per kilogram and USD 0.40 per kilogram.²¹³

100. On September 7, 2004, the British Airways met with a number of Cartel members, including Lufthansa Cargo, Saudi Arabian Airlines, Swiss WorldCargo, Emirates, and Thai Airways in Oman to discuss implementing the delayed increase in the Fuel Surcharge.²¹⁴ All of the attendees agreed to increase the Fuel Surcharge to USD 0.30 per kilogram, including on routes to the United States.²¹⁵ And other Cartel members likewise raised the Fuel Surcharge to USD 0.30 per kilogram.²¹⁶ At the same time that they announced the Fuel Surcharge increase to USD 0.30 per kilogram, the Airfreight Carriers announced two new tiers in preparation for increases in the Fuel Surcharge to USD 0.35 per kilogram and USD 0.40 per kilogram.²¹⁷ The Airfreight Carriers referred to these tiers as the seventh and eighth trigger points.²¹⁸

101. In October of 2004 the FPIs continued to rise. On October 20, 2004, British Airways met with Cartel members Singapore Airlines, Air France, British Airways, China Airlines, Cargolux, Japan Airlines, KLM, Korean Air, Lufthansa Cargo, Malaysian Airlines and Thai Airways in Singapore, and arranged for the implementation of the next increase in the Fuel

²¹³ See, e.g., Press Release, *KLM Cargo Adapts Fuel Surcharge Mechanism and Increases Fuel Surcharge to Euro 0.35* (Oct. 12, 2004) [LH_CIV_0029856]; Press Release, *British Airways World Cargo to Increase Fuel Surcharge* (Sept. 24, 2004) [SIA_CIV_0038050].

²¹⁴ Minutes of the Fourth Oman AOC-CSC Meeting of 2004, at 1 (Sept. 7, 2004) [SIA_CIV_0026867].

²¹⁵ Minutes of the Fourth Oman AOC-CSC Meeting of 2004, at 1 (Sept. 7, 2004) [SIA_CIV_0026867].

²¹⁶ Press Release, Air Canada, *Air Canada Fuel Surcharge ab 08.10.2004* (Sept. 27, 2004) [SIA_CIV_0014322]. See also Press Release, KLM Cargo, *KLM Cargo Increases Fuel Surcharge to Euro 0.30 Effective September 29th* (Sept. 15, 2004) [LH_CIV_0029858]; Press Release, Air France Cargo, *Air France Cargo erhöht Fuel Surcharge* (Sept. 21, 2004) [LH_CIV_0158260]; Press Release, Martinair Cargo, *Martinair Cargo Increases Fuel Surcharge* (Sept. 21, 2004) [SIA_CIV_0038047].

²¹⁷ See, e.g., Press Release, British Airways World Cargo, *British Airways World Cargo to Increase Fuel Surcharge* (Sept. 24, 2004) [SIA_CIV_0038050]; Letter from Tom Wong, Chairman, Cargo Sub-Committee, Hong Kong Board of Airline Representatives, to Stephen Kwok, Assistant Director-General (Air Services), Civil Aviation Department, Hong Kong (Apr. 7, 2005) [QAL-01-195594].

²¹⁸ Letter from Tom Wong, Chairman, Cargo Sub-Committee, Hong Kong Board of Airline Representatives, to Stephen Kwok, Assistant Director-General (Air Services), Civil Aviation Department, Hong Kong (Apr. 7, 2005) [QAL-01-195594].

Surcharge.²¹⁹ After the meeting, the Cartel members increased the Fuel Surcharge by USD 0.05 per kilogram to USD 0.35 per kilogram effective in late October 2004.

102. Thereafter the FPIs fell, and, effective in January 2005, the Airfreight Carriers, including British Airways, in parallel fashion, decreased the Fuel Surcharge to USD 0.30 per kilogram.²²⁰ The Airfreight Carriers, including British Airways coordinated this decrease by communicating with each other prior to the effective date of the decrease.²²¹

103. Thereafter, the FPIs increased, and the Airfreight Carriers, including British Airways, announced an increase in the Fuel Surcharge to USD 0.35 in accordance with the Cartel methodology. British Airways' increase was in parallel fashion with the other Cartel members and went into effect on March 24, 2005.²²²

104. By mid-March, as the FPIs continued to increase, the Cartel members discussed the next increase in the Fuel Surcharge and the need for additional tiers. According to a Lufthansa Cargo email, “[s]ubtle talks to other European carriers like SK [Scandinavian], BA, AZ [Alitalia] are underway” Lufthansa Cargo also reported discussions with Cartel members Singapore Airlines, Korean Airlines, and Cathay Pacific regarding higher surcharges on routes in the “TC-1 area” which includes flights to/from the United States.²²³ As a result of these

²¹⁹ Minutes, Singapore BAR CSC meeting (Oct. 20, 2004) [LH_CIV_0148174].

²²⁰ Press Release, British Airways World Cargo, *British Airways World Cargo to Decrease Fuel Surcharge* (Dec. 30, 2004) [SIA_CIV_0038094]; E-mail from Marek Vransky, Cargo Commercial Manager for Central Europe, British Airways World Cargo (Dec. 27, 2004) [SIA_CIV_0001590]. See also Press Release, Air France Cargo, *Fuel Surcharge decrease from 01/01/2005* (Dec. 17, 2004) [SIA_CIV_0038082]; Press Release, KLM Cargo, *KLM Cargo decreases fuel surcharge from GBP 0,24 to GBP 0,21 effective January 1, 2005* (Dec. 17, 2004) [SIA_CIV_0038083]; Press Release, Martinair Cargo, *Martinair Cargo Reduces Fuel Surcharge* (Dec. 20, 2004) [SIA_CIV_0038084].

²²¹ E-mail from P. Chandrasen, Air France, to representatives of British Airways, Cargolux, Cathay Pacific, Emirates, KLM, Lufthansa Cargo, Qatar Airways, Singapore Air and Swiss WorldCargo (Dec. 21, 2004) [SIA_CIV_0030970].

²²² Press Release, British Airways World Cargo, *British Airways World Cargo to Increase Fuel Surcharge* (Mar. 10, 2005) [SIA_CIV_0038134]; E-mail between Qantas Airways employees (Mar. 10, 2005) [QAL-01-195589].

²²³ See, e.g., E-mail between Lufthansa Cargo employees (Mar. 24, 2005) [LH_CIV_0061708].

discussions, the Cartel members, including British Airways, took the next increase in the Fuel Surcharge to USD 0.40 per kilogram and added two more tiers (triggers 9 and 10).²²⁴

105. On March 23, 2005, British Airways wrote to Singapore Air and other Cartel member informing them that “the decision [to increase the Fuel Surcharge to USD 0.40] will be taken [tomorrow] in London, with announcement event[] on 24MAR. The eventual increase . . . would be then eff[ective] with usual 14 day notice, i.e. eff[ective] 7APR05.”²²⁵ The Airfreight Carriers serving Japan also carefully coordinated the timing of the Fuel Surcharge increase – also with the involvement of British Airways.²²⁶

106. On June 29, 2005, British Airways coordinated its Fuel Price increase with Cartel members Qantas, EVA, and China Airlines. British Airways wrote to a representative of Qantas Airways, stating EVA Airways and China Airlines “propose to increase fuel surcharge . . . , shall we follow the same?”²²⁷ The Qantas representative responded by informing British Airways that “[f]or fuel surcharge, please follow the action of [EVA Airways and China Airlines].”²²⁸ British Airways acknowledged Qantas’ response and noted that the “effective date for [China Airlines] is 17 Jul[y 2005] and [EVA Airways] 19 Jul[y 2005]. Suggest we can start from 16 Jul[y 2005]”²²⁹

107. On June 30, 2005, Singapore Air sent an email to ACCS members, stating “[i]t is time again to exchange information.” In response, British Airways wrote to Singapore Air and

²²⁴ Press Release, British Airways World Cargo, *British Airways World Cargo to Increase Fuel Surcharge* (Mar. 24, 2005) [SIA_CIV_0038147]. See also Letter from Tom Wong, Chairman, Cargo Sub-Committee, Hong Kong Board of Airline Representatives, to Stephen Kwok, Assistant Director-General (Air Services), Civil Aviation Department, Hong Kong (Apr. 7, 2005) [QAL-01-195594].

²²⁵ E-mail from Marek Vransky, British Airways, to ACCS members (Mar. 22, 2005) [SIA_CIV_0001566].

²²⁶ E-mail between Lufthansa Cargo employees (Apr. 1, 2005) [LH_CIV_0001221].

²²⁷ E-mail from Fannie Yueh, British Airways, to Qantas Airways Employee, at 3 (June 30, 2005) [QAL-01-195674].

²²⁸ *Id.* at 2.

²²⁹ *Id.*

said that British Airways would be increasing its Fuel Surcharge in July.²³⁰ In addition, British Airways coordinated the July 2005 increase in the Fuel Surcharge with Cartel members, Qantas Airways, China Airlines and EVA Airways.²³¹

108. Effective in July 2005, the Airfreight Carriers, including British Airways, increased the Fuel Surcharge to USD 0.45 per kilogram in a coordinated and parallel manner.²³² This increase was preceded by discussions and communications among British Airways and other Cartel members regarding the increase.²³³

109. On July 11, 2005, British Airways attended a meeting of the Cargo Subcommittee of the Hong Kong Board of Airline Representatives at the Hong Kong Hotels Association, Tsimshatsui.²³⁴ Also attending were Cartel members Air France, All Nippon Airways, Asiana Airlines, Cargolux, Cathay Pacific, EVA Airways, Japan Airlines, KLM, Korean Air, Lufthansa Cargo, Martinair, Nippon Cargo Airlines, Polar Air Cargo, SAS, Saudi Arabian Airlines, Singapore Air, South African Airways, Swiss WorldCargo, Thai Airways, United Airlines and VARIG, among others.²³⁵ The attendees discussed and agreed on new tiers for the Fuel Surcharges, the currency in which the Surcharge should be denominated, and how to explain the increase to customers. With respect to the last point, they agreed to refer customers to the FPI on

²³⁰ E-mail from Marek Vransky, British Airways, to ACCS Members (June 30, 2005) [SIA_CIV_0001444].

²³¹ E-mail between Qantas Airways employees (July 1, 2005) [QAL-01-195671].

²³² ATW Daily News, *BA ups fuel surcharge in face of rising oil prices* (June 27, 2005) [QAL-01-044164]. *See also* Press Release, KLM Cargo, *KLM Cargo Increases Fuel Surcharge to Euro 0.45 Effective July 7, 2005* (June 23, 2005) [QAL-01-209646]; Letter from Bruce McCaffrey, Vice President Freight, The Americas, Qantas Freight, to Customer (June 28, 2005) [QAL-01-168181]; E-mail from Basil Baramki, Air France, to ACCS Members (July 1, 2005) [LH_CIV_0003413]; E-mail from Mike Fuchs, Martinair, to ACCS Members (July 1, 2005) [LH_CIV_0003413]; E-mail between Cargo employees (June 28, 2005) [LH_CIV_0157160]; E-mail between Swiss WorldCargo employees (June 29, 2005) [LH_CIV_0000841]; E-mail from General Manager of Pricing, Lufthansa Cargo, to several Lufthansa Cargo employees (June 27, 2005) [LH_CIV_0001016].

²³³ E-mail from Walter Burri, Singapore Air, to ACCS members (June 30, 2005) [LH_CIV_0000838]; E-mail from Marek Vransky, British Airways, to ACCS Members (June 30, 2005) [SIA_CIV_0001444]; E-mail from Fannie Yueh, British Airways, to Qantas Airways employee (Feb. 29, 2005) [QAL-01-195674].

²³⁴ Meeting Minutes, Hong Kong BAR CSC (July 11, 2005) [LH_CIV_0008573].

²³⁵ Meeting Minutes, Hong Kong BAR CSC (July 11, 2005) [LH_CIV_0008573].

the Lufthansa Cargo website to “justify . . . modification of [the] current Fuel Surcharge Mechanism”²³⁶

110. On August 3, 2005, Cartel leaders British Airways, Air France, KLM, Martinair, Cargolux and Lufthansa Cargo met “to update the view of current fuel surcharge.”²³⁷ The meeting took place at a lunch buffet at “Cafe Serena of hotel Nikkon Hong Kong, 1 floor, 72, Mody Road, Tsumshatsui East, Kowloon at 1245 local” time.²³⁸

111. On August 22, 2005, British Airways had further discussions with Lufthansa Cargo, KLM, Korean Air, and other Cartel members to implement the next increase in the Fuel Surcharge.²³⁹ And, effective in September 2005, British Airways and the other Cartel members increased the Fuel Surcharge to USD 0.50 per kilogram in a coordinated and parallel fashion.²⁴⁰ At the same time that they announced the increase to USD 0.50 per kilogram, British Airways and other Airfreight Carriers announced two new tiers (trigger levels eleven and twelve).²⁴¹

²³⁶ Meeting Minutes, Hong Kong BAR CSC (July 11, 2005) [LH_CIV_0008573].

²³⁷ E-mail from Timothy Li, Director, Business Development & Network Management, Asia & Pacific, Cargolux, to representatives of Air France, KLM, Martinair, British Airways and Lufthansa Cargo (July 29, 2005) [LH_CIV_0008665].

²³⁸ E-mail from Timothy Li, Director, Business Development & Network Management, Asia & Pacific, Cargolux, to representatives of Air France, KLM, Martinair, British Airways and Lufthansa Cargo (July 29, 2005) [LH_CIV_0008665].

²³⁹ See, e.g., E-mail from Lori Burrell, Director Sales & Services – Canada, KLM Cargo, to Brian Russell, British Airways, R. McGowan, Korean Air, and a Lufthansa Cargo employee (Aug. 22, 2005) [LH_CIV_0112006]; Email from Marek Vransky, Cargo Manager for Central Europe to ACCS Members (Aug. 26, 2005) [LH_CIV_06132].

²⁴⁰ Press Release, British Airways World Cargo, (Aug. 25, 2005) [SIA_CIV_0031047]; Press Release, British Airways World Cargo (Aug. 25, 2005) [LH_CIV_0030987]; Press Release, Iberia Cargo, *Iberia Cargo Treibstoffzuschlag EUR 0,50/kg* (Aug. 30, 2005) [SIA_CIV_0031058]; Cargogram, Iberia (Sept. 6, 2005) [QAL-01-221616]; E-mail from Marek Vransky, Cargo Commercial Manager for Central Europe, British Airways World Cargo, to ACCS members (Aug. 26, 2005) [LH_CIV_0006132]; E-mail from Neil Salmon, British Airways, to a Qantas Airways employee (Aug. 26, 2005) [QAL-01-209710]. See also Press Release, KLM Cargo, *KLM Cargo Increases Fuel Surcharge to Euro 0.50 Effective September 5, 2005* (Aug. 22, 2005) [QAL-01-209702]; Letter from Air France Cargo to Customer (Aug. 23, 2005) [LH_CIV_0063813]; Press Release, Air France Cargo, *Modification Fuel Surcharge AF* (Sept. 16, 2005) [LH_CIV_0004081]; Letter from Bruce McCaffrey, Vice President Freight, The Americas, Qantas Freight, to Customer (Aug. 22, 2005) [QAL-01-168182]; E-mail from General Manager of Pricing, Lufthansa Cargo, to several Lufthansa Cargo employees (Aug. 23, 2005) [LH_CIV_0001499]; E-mail from Walter Burri, Singapore Air, to ACCS Members (Aug. 24, 2005) [LH_CIV_0000846].

²⁴¹ Press Release, British Airways World Cargo, *British Airways World Cargo to Increase Fuel Surcharge* (Aug. 25, 2005) [SIA_CIV_0031047].

112. In September 2005, the FPIs exceeded the next threshold, indicating that the Fuel Surcharge should be increased to USD 0.55 per kilogram.²⁴² However, Lufthansa Cargo, the Cartel leader, was again concerned that the Fuel Surcharge increases were happening too rapidly. Accordingly, Lufthansa Cargo and the other Cartel members delayed the next increase.²⁴³

113. On September 28, 2005, British Airways met with Cartel leaders Lufthansa Cargo, Air France, KLM, and Swiss WorldCargo in Amsterdam concerning “fine tuning . . . [the] surcharge.”²⁴⁴

114. On October 5, 2005, British Airways, Lufthansa, and Swiss World, coordinated the timing of the implementation of the previously delayed increase in the Fuel Surcharge to USD 0.55/kg.²⁴⁵ Effective on or about October 17, 2005, the Airfreight Carriers, including British Airways, increased the Fuel Surcharge to USD 0.55 per kilogram.²⁴⁶

115. Effective in late October and early November 2005, the Airfreight Carriers, including British Airways, increased the Fuel Surcharge to USD 0.60 per kilogram in a

²⁴² E-mail from Lufthansa Cargo to Air Canada, Air China, Air New Zealand, Cathay Pacific, EVA Airways, Japan Airlines, Korean Air, LAN Cargo, SAS, Singapore Air and South African Airways (Sept. 12, 2005) [LH_CIV_0135466].

²⁴³ E-mail from Lufthansa Cargo to Air Canada, Air China, Air New Zealand, Cathay Pacific, EVA Airways, Japan Airlines, Korean Air, LAN Cargo, SAS, Singapore Air and South African Airways (Sept. 12, 2005) [LH_CIV_0135466]. See also e-mail between Lufthansa Cargo employees (Sept. 15, 2005) [LH_CIV_0040520] (pasting the text of British Airways’ September 15, 2005, press release regarding suspension of the Fuel Surcharge increase).

²⁴⁴ E-mail from Gerard de Wit, WorldACD (Sept. 9, 2005) [SIA_CIV_0000524].

²⁴⁵ E-mail between Swiss WorldCargo employees (Oct. 5, 2005) [SIA_CIV_0000016].

²⁴⁶ Press Release, British Airways World Cargo, *British Airways World Cargo to Increase Fuel Surcharge* (Oct. 2, 2005) [LH_CIV_0030940]; E-mail from Marek Vransky, Cargo Commercial Manager for Central Europe, British Airways World Cargo, to ACCS members (Oct. 6, 2005) [SIA_CIV_0001538]; E-mail from Marek Vransky, Cargo Commercial Manager for Central Europe, British Airways World Cargo, to ACCS members (Oct. 14, 2005) [SIA_CIV_0001522]; E-mail between Swiss WorldCargo employees (Oct. 5, 2005) [SIA_CIV_0000016]; E-mail between Qantas Airways employees (Oct. 6, 2005) [QAL-01-195754]. See also Press Release, KLM Cargo, *KLM Cargo Increases Fuel Surcharge to Euro 0.55 Effective October 17, 2005* (Oct. 5, 2005) [QAL-01-197523]; Press Release, Air France Cargo, *Air France Increases Fuel Surcharges* (Oct. 6, 2005) [LH_CIV_0041854]; E-mail from Mike Fuchs, Martinair, to ACCS Members (Oct. 7, 2005) [LH_CIV_0006188]; E-mail from Walter Hintermann, American Airlines, to ACCS members (Oct. 7, 2005) [LH_CIV_0006197]; E-mail from Walter Burri, Singapore Air, to ACCS Members (Oct. 5, 2005) [LH_CIV_0006188].

coordinated and parallel fashion.²⁴⁷ British Airways communicated its plans for the Fuel-Surcharge increase to ACCS members among others.²⁴⁸ When British Airways and the other Airfreight Carriers announced the Fuel Surcharge increase, they simultaneously announced two additional, agreed-to tiers (trigger levels thirteen and fourteen) for increases to USD 0.65 per kilogram and USD 0.70 per kilogram.²⁴⁹

116. In November 2005, as the FPIs declined, the Airfreight Carriers, in accordance with the Cartel agreement and in a coordinated and parallel fashion, reduced the Fuel Surcharge by USD 0.05 per kilogram to USD 0.55 per kilogram, effective in late November 2005.²⁵⁰ British Airways again sent its plans for the Fuel Surcharge to other Cartel members prior to implementing them.²⁵¹

²⁴⁷ Press Release, British Airways World Cargo, *British Airways World Cargo to increase Fuel Surcharge* (Oct. 21, 2005) [LH_CIV_0063661]; Newsflash, British Airways World Cargo (Oct. 13, 2005) [SIA_CIV_0005675]; E-mail from Marek Vransky, Cargo Commercial Manager for Central Europe, British Airways World Cargo, to ACCS members (Oct. 14, 2005) [SIA_CIV_0001522]; E-mail from Walter Burri, Singapore Air, to ACCS members (Oct. 18, 2005) [SIA_CIV_0001450]; E-mail between Qantas Airways employees (Oct. 18, 2005) [QAL-01-195762]; E-mail between Swiss WorldCargo employees (Oct. 13, 2005) [LH_CIV_0006415]. *See also* Press Release, Air France-KLM, *Air France Cargo-KLM Cargo increase fuel surcharge to Euro 0.60 effective October 28th, 2005* (Oct. 17, 2005) [LH_CIV_0045855]; Press Release, Air France-KLM, *Air France Cargo-KLM Cargo Increase Fuel Surcharge to Euro 0.60 Effective November 4th, 2005* (Oct. 19, 2005) [LH_CIV_0030887]; Press Release, Martinair Cargo, *Martinair Cargo Increases Fuel Surcharges* (Oct. 19, 2005) [LH_CIV_0063693]; Letter from Bruce McCaffrey, Vice President Freight, The Americas, Qantas Freight, to Customer (Oct. 21, 2005) [QAL-01-168186]; E-mail from Mike Fuchs, Martinair, to ACCS Members (Oct. 18, 2005) [LH_CIV_0006242].

²⁴⁸ E-mail from Marek Vransky, Cargo Commercial Manager for Central Europe, British Airways World Cargo, to ACCS members (Oct. 14, 2005) [SIA_CIV_0001522]; E-mail from Walter Burri, Singapore Air, to ACCS members (Oct. 18, 2005) [SIA_CIV_0006238].

²⁴⁹ Newsflash, British Airways World Cargo (Oct. 13, 2005) [SIA_CIV_0005676]. *See also* E-mail from Maria, Ng, Cathay Pacific, to Cargo Sub-Committee, Board of Airline Representatives, Hong Kong (Oct. 18, 2005) [QAL-01-213325]; E-mail from Maria, Ng, Cathay Pacific, to Cargo Sub-Committee, Board of Airline Representatives, Hong Kong (Nov. 1, 2005) [QAL-01-213329].

²⁵⁰ Press Release, British Airways World Cargo, *British Airways World Cargo to Decrease Fuel Surcharge* (Nov. 10, 2005) [LH_CIV_0063583]; Newsflash, British Airways World Cargo (Nov. 10, 2005) [LH_CIV_0030865]; E-mail from Marek Vransky, Cargo Commercial Manager for Central Europe, British Airways World Cargo, to ACCS members (Nov. 10, 2005) [SIA_CIV_0001513]. *See also* Press Release, Air France-KLM, *Air France Cargo – KLM Cargo Decreases Fuel Surcharge to Euro 0.55 Effective November 16, 2005* (Nov. 2, 2005) [LH_CIV_0029409]; Press Release, Martinair, *Martinair Cargo Reduces Fuel Surcharge* (Nov. 8, 2005) [LH_CIV_0063610]; E-mail between Lufthansa Cargo employees (Nov. 4, 2005) [LH_CIV_0001243]; E-mail between Lufthansa Cargo employees (Nov. 2, 2005) [LH_CIV_0159173]; E-mail between Lufthansa Cargo employees (Nov. 6 2005) (certified translation) [LH_CIV_0001531].

²⁵¹ E-mail from Marek Vransky, Cargo Commercial Manager for Central Europe, British Airways World Cargo, to Singapore Air and other Cartel members (Nov. 10, 2005) [SIA_CIV_0001513].

117. In accordance with the Cartel agreement and in a coordinated manner, the Cartel members, including British Airways, decreased the Fuel Surcharge to USD 0.50 per kilogram effective in late November/early December 2005.²⁵²

118. As the FPIs of the Cartel members continued to decline, the Airfreight Carriers, including British Airways, in parallel fashion, decreased the Fuel Surcharge to USD 0.45 per kilogram in early December 2005.²⁵³

119. In late January 2006, the FPIs exceeded the relevant threshold, indicating that the Fuel Surcharge should be increased.²⁵⁴ In response, on January 25, 2006, Peter Scholten of Martinair invited British Airways, Lufthansa Cargo, Air France, Cargolux, Martinair, SAS and Virgin Atlantic to a meeting on February 2, 2006, at Martinair Cargo's Asia Pacific Continental Head office.²⁵⁵ British Airways attended the meeting.²⁵⁶ The explicit topic of discussion was the

²⁵² Press Release, British Airways World Cargo, *British Airways World Cargo to Decrease Fuel Surcharge* (Nov. 17, 2005) [LH_CIV_0123902]; Press Release, British Airways World Cargo, *Fuel Surcharge Decrease NEWSFLASH* (Nov. 18, 2005) [LH_CIV_0029440]; E-mail from Marek Vransky, Cargo Commercial Manager for Central Europe, British Airways World Cargo, to ACCS members (Nov. 29, 2005) [SIA_CIV_0001462]. *See also* Press Release, Air France-KLM, *Air France Cargo – KLM Cargo reduces fuel surcharge to Euro 0.50 effective November 28, 2005* (Nov. 15, 2005) [LH_CIV_0030856]; Press Release, Martinair Cargo, *Martinair Cargo Reduces Fuel Surcharge* (Nov. 16, 2005) [LH_CIV_0029479]; Press Release, American Airlines Cargo, *American Airlines Cargo Decrease Fuelsurcharge* (Nov. 18, 2005) [LH_CIV_0063523]; Press Release, Lufthansa Cargo, *Lufthansa Cargo Lowers Fuel Surcharge to 0.45 Euro/kg* (Nov. 22, 2005) [LH_CIV_0029405]; E-mail from Basil Baramki, Air France Cargo, to ACCS Members (Nov. 28, 2005) [LH_CIV_0000859]; E-mail from Mike Fuchs, Martinair, to ACCS Members (Dec. 1, 2005) [LH_CIV_0003447].

²⁵³ Press Release, British Airways World Cargo, *British Airways World Cargo to Decrease Fuel Surcharge* (Nov. 24, 2005) [SIA_CIV_0007124]; Cargogram, Iberia (Jan. 4, 2006) [QAL-01-221614]; E-mail from Marek Vransky, Cargo Commercial Manager for Central Europe, British Airways World Cargo, to ACCS members (Nov. 29, 2005) [SIA_CIV_0001462]. *See also* Customer News Letter, Air France-KLM, *Air France Cargo – KLM Cargo reduces fuel surcharge to Euro 0.45 effective December 1, 2005* (Nov. 22, 2005) [LH_CIV_0063484]; Letter from Martinair Cargo to Customers (Nov. 23, 2005) [LH_CIV_0063467]; Press Release, American Airlines Cargo, *American Airlines Cargo Decrease Fuelsurcharge* (Dec. 2, 2005) [LH_CIV_0063393]; E-mail from Marek Vransky, Cargo Commercial Manager for Central Europe, British Airways World Cargo, to ACCS members (Nov. 29, 2005) [SIA_CIV_0001462]; E-mail from Marek Vransky, Cargo Commercial Manager for Central Europe, British Airways World Cargo, to ACCS members (Nov. 29, 2005) [SIA_CIV_0001462].

²⁵⁴ E-mail from Walter Burri, Singapore Air, to representatives of British Airways, KLM, Lufthansa Cargo and Swiss WorldCargo (Feb. 2, 2006) [LH_CIV_0000869].

²⁵⁵ E-mail from Winnie Hui, Management Assistant, Asia Pacific, Martinair Cargo, to representatives of Air France, British Airways, Cargolux, Lufthansa Cargo, SAS and Virgin, among others (Jan. 25, 2006) [LH_CIV_0008577].

²⁵⁶ E-mail from Carsten Hernig, Lufthansa Cargo, to Winnie Hui, Management Assistant, Asia Pacific, Martinair Cargo (Jan. 19, 2006) [LH_CIV_0008587].

Fuel Surcharge, and the attendees agreed upon and coordinated the details of the implementation of the next increase.²⁵⁷

120. On February 2, 2006, Singapore Air sent an email to British Airways, KLM, Lufthansa Cargo and Swiss WorldCargo, sharing Singapore Airlines' understanding that the Airfreight Carriers would be increasing Fuel Surcharges on or about February 16, 2006.²⁵⁸ And on February 6, 2006, the same Singapore Air representative sent another e-mail—this time to all ACCS members, announcing the specific plans regarding the Fuel Surcharge increase. On the same day, British Airways,²⁵⁹ American Airlines,²⁶⁰ Japan Airlines²⁶¹ and Malaysian Airlines System²⁶² responded to the entire group, each stating that it would increase its Fuel Surcharge.

121. In furtherance of the January and February 2006 discussions and pursuant to the Cartel agreement, British Airways and the other Cartel members agreed to and did increase the Fuel Surcharge—in a coordinated and largely parallel fashion—to USD 0.50 per kilogram effective on or about February 16, 2006.²⁶³

²⁵⁷ E-mail from Winnie Hui, Management Assistant, Asia Pacific, Martinair Cargo, to representatives of Air France, British Airways, Cargolux, Lufthansa Cargo, SAS and Virgin, among others (Jan. 25, 2006) [LH_CIV_0008577].

²⁵⁸ E-mail from Walter Burri, Singapore Air, to representatives of British Airways, KLM, Lufthansa Cargo and Swiss WorldCargo (Feb. 2, 2006) [LH_CIV_0000869].

²⁵⁹ E-mail from Marek Vransky, British Airways, to ACCS Members (Feb. 6, 2006) [LH_CIV_0004591].

²⁶⁰ E-mail from Walter Hintermann, American Airlines, to ACCS Members (Feb. 6, 2006) [LH_CIV_0004593].

²⁶¹ E-mail from Roger Proamer, Sirius Air, GSA for Japan Airlines, to ACCS Members (Feb. 6, 2006) [LH_CIV_0004597].

²⁶² E-mail from Andre Berger, MAS Cargo, to ACCS Members (Feb. 6, 2006) [LH_CIV_0004595].

²⁶³ Press Release, British Airways World Cargo, *British Airways World Cargo to Increase Fuel Surcharge* (Feb. 2, 2006) [LH_CIV_0030192]; Cargogram, Iberia (Feb. 17, 2006) [QAL-01-221613]; E-mail between Qantas Airways employees (Feb. 2, 2006) [QAL-01-195789]; E-mail from Marek Vransky, British Airways, to ACCS Members (Feb. 6, 2006) [LH_CIV_0004591]; E-mail from Walter Burri, Singapore Air, to representatives of British Airways, KLM Cargo, Lufthansa Cargo and Swiss WorldCargo (Feb. 2, 2006) [LH_CIV_0000869]; E-mail between Lufthansa Cargo employees (Feb. 2, 2006) [LH_CIV_0004351]. *See also* Press Release, Air France-KLM, *Air France Cargo – KLM Cargo increases fuel surcharge to Euro 0.50 effective February 14, 2006* (Feb. 1, 2006) [LH_CIV_0030190]; Letter from Martinair Cargo to Customers (Feb. 2, 2006) [LH_CIV_0063369]; E-mail from Susanne Erb, KLM Cargo, to representatives of British Airways, Lufthansa Cargo, Singapore Air and Swiss WorldCargo (Feb. 3, 2006) [LH_CIV_0000871]; E-mail from Walter Burri, Singapore Air, to representatives of British Airways, KLM, Lufthansa Cargo and Swiss WorldCargo (Feb. 2, 2006) [LH_CIV_0000869]; E-mail from Walter Burri, Singapore Air, to ACCS Members (Feb. 6, 2006) [LH_CIV_0004590]; Press Release, *AF-KL Fuel Surcharge Increase 14FEB06* (Feb. 1, 2006) [LH_CIV_0030190]; Press Release, *Martinair Cargo Increases Fuel Surcharge* (Feb. 2, 2006) [LH_CIV_0063369]; Press Release, *British Airways World Cargo to Increase Fuel*

122. Pursuant to the FPI, British Airways, in coordination with the other Cartel Members, increased the Fuel Surcharge to USD 0.55 in early May and to USD 0.60 per kilogram later in May 2006.²⁶⁴

III. The Cartel Members Agreed Not to Discount Fuel Surcharges

123. A Lufthansa executive has acknowledged that “[o]ne of the key success factors in recent years was to hold firmly the policy to apply the respective surcharge level without any negotiation or discount. We should be clear on this and not open up possible fields of discussion with our customers. . . . Surcharges should also not be used as a competitive edge over another company.”²⁶⁵ Indeed, Cartel members not only agreed not to discount the Surcharges, but they monitored each other’s Surcharges.

124. On April 6, 2001, a representative of Turkish Airlines reassured Lufthansa Cargo that it had not been cheating and agreed that “[w]e find it dangerous for all carriers to play with [the Fuel Surcharge].”²⁶⁶

125. On May 15, 2002, Lufthansa Cargo and Air France met and discussed capacity issues as well as measures “undertaken to strictly observe the Fuel Surcharge.”²⁶⁷

126. On September 30, 2002, British Airways and representatives of seven other Cartel members met confidentially in Japan.²⁶⁸ All eight Cartel members agreed that there should be “no exceptions” to the imposition of the Fuel Surcharge because “[a]llowing one exception [would] defeat the whole industrial movement. This means, of course, no adjustments in net/net

Surcharge (Feb. 2, 2006) [LH_CIV_0030192]; Press Release, *Air Canada Cargo Fuel Increase* (Feb. 10, 2006) [LH_CIV_0063321].

²⁶⁴ Press Release, *Air Canada Cargo Fuel Increase* (May 17, 2006) [LH_CIV_0063109]. See also Lufthansa Cargo News, *Lufthansa Cargo raises fuel surcharge to 0.60 Euro/kg* (May 2, 2006) [LH_CIV_0031175]; Press Release, *AF-KL Fuel Surcharge Increase 17MAY06* (May 3, 2006) [LH_CIV_0063200]; Press Release, *British Airways World Cargo – Fuel Surcharge Newsflash* (May 8, 2006) [LH_CIV_0029436].

²⁶⁵ Landau Decl. ¶10, quoted in Magistrate’s Report & Recommendation concerning class certification at 76.

²⁶⁶ E-mail from Nasug Cetin, Turkish Airlines (Apr. 9, 2001) [LH_CIV_0001418].

²⁶⁷ Notes, Lufthansa Cargo (May 15, 2002) (unofficial translation) (emphasis in original) [LH_CIV_0001771].

²⁶⁸ E-mail between Lufthansa Cargo employees (Sept. 30, 2002) [LH_CIV_0001210].

rates, either whole or partial.”²⁶⁹ In addition, the Airfreight Carriers established “[c]lose hotlines . . . with immediate effect among today’s participants in case of doubt and contradicting/misleading market information.”²⁷⁰

127. On October 4, 2002, British Airways and Cartel members Air France, Alitalia, Cargolux, Japan Airlines, KLM, Lufthansa Cargo, Nippon Cargo Airlines, SAS and South African Airways met in Japan and “reconfirmed implementation of [the Fuel Surcharge] without exception/adjustment irrespective of sales districts. . . .”²⁷¹

IV. The Cartel Members Agreed Not to Offset Surcharges By Cutting Base Rates

128. On February 3, 2000, Singapore Airlines, the leader of the Singapore BAR CSC, “urged member carriers not to quote or offer lower *ad hoc* [sic] rates to cargo agents after they have adopted a fuel surcharge policy.”²⁷²

129. A Qantas email directed Qantas managers that “at no time should you compensate [for fuel surcharge implementation] by reducing your market rate. This will not be accepted at all.”²⁷³

130. On April 6, 2001, Cargolux e-mailed British Airways, Air France, Lufthansa Cargo, Turkish Airlines and Swissair, stating that “we [Cargolux] received an inquiry for [] regular [business to Los Angeles] for which we offered USD 1.95/k net *plus* [Fuel Surcharge] and which is *in line with* our *talks*. . . . However, we had to learn that the best offer came from one of our round with USD 1.80 incl[uding] FSC [repeat] incl[uding] FSC [sic]. . . .”²⁷⁴ A subsequent e-mail from Turkish Airlines added that “[w]e find it dangerous for all carriers to

²⁶⁹ E-mail between Lufthansa Cargo employees (Sept. 30, 2002) [LH_CIV_0001210].

²⁷⁰ E-mail between Lufthansa Cargo employees (Sept. 30, 2002) [LH_CIV_0001210].

²⁷¹ E-mail between Lufthansa Cargo employees (Oct. 4, 2002) [LH_CIV_0061718].

²⁷² Minutes, Singapore BAR CSC, at 3 (Feb. 3, 2000) [QAL-01-194627].

²⁷³ Landau Decl. ¶264, quoted in Magistrate’s Report & Recommendation concerning class certification at 76.

²⁷⁴ E-mail from Henry Templin, Country Manager, Cargolux (Apr. 6, 2001) (emphasis added) [LH_CIV_0001418].

play with [the Fuel Surcharge].”²⁷⁵ Swissair responded by informing the entire group, including British Airways, that its “published rate to LAX [Los Angeles International Airport] is 1.85 plus 0.15 USD fuel surcharge. We keep selling on this level and never given [sic] an adhoc [sic] rate to any agent or forwarder.”²⁷⁶

131. On October 4, 2001, the ACRB held a meeting in Jakarta, Indonesia.²⁷⁷ The Airfreight Carriers discussed the Security Surcharge and the Fuel Surcharge, agreeing to use “chargeable weight.” They also agreed to “avoid undercutting price.”²⁷⁸

132. On September 30, 2002, British Airways and representatives of seven other Cartel members met confidentially in Japan.²⁷⁹ In addition to agreeing not to discount the Fuel Surcharge, the Cartel members agreed to make “no adjustments in net/net rates, either whole or partial.”²⁸⁰

133. In February 2005, British Airways agreed with Lufthansa Cargo to “hold [its] rates” on flights from Logan Airport in Boston, Massachusetts, as long as Lufthansa Cargo did not “trash the market.”²⁸¹

134. On October 21, 2005, British Airways shared its rates with Lufthansa and stated in a cover email that “we are pleased to inform you that our prices remain stable.”²⁸² Indeed, throughout the Cartel, British Airways shared rate information with Lufthansa.²⁸³

²⁷⁵ E-mail from Nasug Cetin, Turkish Airlines (Apr. 9, 2001) [LH_CIV_0001418].

²⁷⁶ E-mail from Regional Manager, Turkey & Southern Caucasus, Swissair, to representatives of British Airways, Cargolux, Lufthansa Cargo and Thai Airways (Apr. 6, 2001) [LH_CIV_0052543].

²⁷⁷ Agenda, ACRB Meeting (Oct. 4, 2001) [LH_CIV_0200132].

²⁷⁸ Agenda, ACRB Meeting (Oct. 4, 2001) [LH_CIV_0200132].

²⁷⁹ E-mail between Lufthansa Cargo employees (Sept. 30, 2002) [LH_CIV_0001210].

²⁸⁰ E-mail between Lufthansa Cargo employees (Sept. 30, 2002) [LH_CIV_0001210].

²⁸¹ Swiss WorldCargo, CIU Summary Report (Feb. 2005) [SIA_CIV_0000001].

²⁸² E-mail from British Airways E-mail between Lufthansa Cargo employees (Oct. 21, 2005) [LH_CIV_0090781] (attaching British Airways’ “Standard Tariff” and “eRate” sheets, the latter of which contained British Airways World Cargo’s rates to all destinations);

²⁸³ E-mail between Lufthansa Cargo employees (Feb. 26, 2005) [LH_CIV_0036049] (attaching British Airways’ rates); E-mail between Lufthansa Cargo employees (Oct. 4, 2004) [LH_CIV_0036013] (attaching British Airways’ “Golden October” promotional rates); E-mail between Lufthansa Cargo employees (Aug. 30, 2004)

V. The Cartel Encompassed Security Surcharges

135. Following the terrorist attacks of September 11, 2001, the Airfreight Carriers, including British Airways, agreed with other Cartel members to impose a new surcharge for the purported purpose of recouping increased security-related costs. However, the amount of the new surcharge was not calculated based on any Airfreight Carrier's actual additional security-related costs, and it significantly exceeded the actual increase in security costs, overcharging DHL by a substantial amount.

136. Instead of being modeled on actual security costs, the Security Surcharge was modeled on the Fuel Surcharge, so that it could increase profits and be easy to implement and monitor. As one Airfreight Carrier executive noted:

The calculation on the basis of AW [actual weight] has already been applied in the calculation of the fuel surcharge and is therefore easier to communicate internally and externally. This has been particularly important in the current situation since a fast and successful implementation was important. In addition, the billing procedure is already known from the fuel surcharge and implemented.²⁸⁴

137. Like the Fuel Surcharge, the dollar amount of the Security Surcharge was based on weight, not on actual costs. Indeed, the Security Surcharge significantly over-recovered for increased security costs. For example, Lufthansa Cargo collected EUR 111.1 million from the Security Surcharge in 2002, but incurred only EUR 44.8 million in total security-related costs much of which would have been covered by base-freight rates.²⁸⁵

[LH_CIV_0036017] (attaching British Airways' "Pricebreaker" promotional rates); E-mail between Lufthansa Cargo employees (Nov. 19, 2003) [LH_CIV_0043145] (attaching British Airways' "88 for USA!" promotional rates); E-mail between Lufthansa Cargo employees (July 28, 2003) [LH_CIV_0040430] (attaching British Airways' "Heat Wave" promotional rates); E-mail between Lufthansa Cargo employees (July 8, 2003) [LH_CIV_0036030] (attaching British Airways' "Heat Wave" promotional rates).

²⁸⁴ E-mail between Lufthansa Cargo employees (Oct. 1, 2001) [LH_CIV_0000066] (unofficial translation).

²⁸⁵ Presentation, Lufthansa Cargo, at 12 (June 2003) [LH_CIV_0098929].

138. On September 20, 2001, Lufthansa Cargo reported in an internal email that it had “just finished a meeting with BA and AF [Air France]” and that “[a]ll agreed, security (screening, searching charges) will be passed to customer.”²⁸⁶ And on or about September 28, 2001, British Airways and other Cartel members announced that they would be imposing a Security Surcharge.²⁸⁷

139. On October 2, 2001, British Airways met with Cartel members Air France, Alitalia, Cargolux, KLM, Martinair, South African Airways and Swissair in Johannesburg, South Africa, at the airport offices of South African Airways to discuss the Security Surcharge.²⁸⁸ The participants discussed the market’s “very negative response” to the announcement of the Security Surcharge.²⁸⁹ Despite the negative response, the Airfreight Carriers decided “[i]n agreement with almost all airlines except Egypt Air,” to go forward with the implementation of the worldwide Security Surcharge effective in mid-October 2001.²⁹⁰ They also agreed that Lufthansa Cargo would be the first Airfreight Carrier to inform the market of the Security Surcharge, “followed closely by KLM and AF [Air France].”²⁹¹ The Cartel members recognized the importance of “a lot of communication”²⁹² and such communication continued.²⁹³

²⁸⁶ E-mail between Lufthansa Cargo employees (Sept. 20, 2001) [LH_CIV_0051348].

²⁸⁷ Newsflash, British Airways World Cargo (Oct. 3, 2001) [LH_CIV_0041040] (noting that British Airways had publicly announced the Security Surcharge on September 28, 2001). E-mail between Lufthansa Cargo employees (October 2, 2001) [LH_CIV_0157951].

²⁸⁸ E-mail between Lufthansa Cargo employees (Oct. 4, 2001) [LH_CIV_0135600] (attaching a chart summarizing the agreement between and among the attending Airfreight Carriers); E-mail from Sales Manager, Southern Africa, Lufthansa Cargo, to Regional Director Sales, Africa, Lufthansa Cargo (Oct. 1, 2001) [LH_CIV_0001284]; E-mail between Lufthansa Cargo employees (Sept. 29, 2001) [LH_CIV_0001281].

²⁸⁹ E-mail between Lufthansa Cargo employees (Oct. 4, 2001) (attaching a chart summarizing the agreement between and among the attending Airfreight Carriers) [LH_CIV_0135600]; E-mail from Sales Manager, Southern Africa, Lufthansa Cargo, to Regional Director Sales, Africa, Lufthansa Cargo (Oct. 1, 2001) [LH_CIV_0001284]; E-mail between Lufthansa Cargo employees (Sept. 29, 2001) [LH_CIV_0001281].

²⁹⁰ E-mail between Lufthansa Cargo employees (Oct. 3, 2001) [LH_CIV_0000074].

²⁹¹ E-mail between Lufthansa Cargo employees (Oct. 3, 2001) [LH_CIV_0000074].

²⁹² E-mail between Lufthansa Cargo employees (Oct. 4, 2001) [LH_CIV_0000074].

²⁹³ *See, e.g.*, E-mail between Lufthansa Cargo employees (Oct. 4, 2001) [LH_CIV_0001291].

140. Although British Airways had initially made a public announcement on September 28, 2001, that it would charge a Security Surcharge of GBP 15.00 per air waybill (rather than per kilogram) on all flights,²⁹⁴ British Airways adopted the Cartel-approved per-kilogram Security Surcharge on October 2, 2001, after communications with other Cartel members regarding the Security Surcharge.²⁹⁵ Lufthansa had noted internally that, once it became “recognized that the usual billing procedure is kg / per actual weight, . . . they [British Airways] will change to our level.”²⁹⁶

141. On October 3, 2001, Hong Kong BAR held a meeting about the Security Surcharge for flights from Hong Kong.²⁹⁷ British Airways attended the meeting.²⁹⁸ British Airways and the other Cartel members, including Air France, Emirates Airline, KLM, Lufthansa Cargo, Martinair, Qantas Airways, SAS and Swissair, confirmed that they would be imposing a Security Surcharge for flights out of Hong Kong.²⁹⁹

142. On October 4, 2001, British Airways attended a meeting of the Air Cargo Representative Board of Indonesia (“ACRB”).³⁰⁰ Other attendees included Cartel members All Nippon Airways, Asiana Airlines, Cargolux, Cathay Pacific, Emirates, EVA Airways, KLM, Korean Air, Nippon Cargo Airlines, Qantas Airways and Singapore Air, among others.³⁰¹ They discussed the implementation of Security Surcharges on flights departing Indonesia, including flights from Indonesia to the United States.³⁰²

²⁹⁴ Newsflash, British Airways World Cargo (Oct. 3, 2001) [LH_CIV_0041040] (noting that British Airways had publicly announced the Security Surcharge on September 28, 2001).

²⁹⁵ E-mail from Joachim Klecha, British Airways, to a Lufthansa Cargo employee (Oct. 8, 2001) [LH_CIV_0001265].

²⁹⁶ E-mail between Lufthansa Cargo employees (Oct. 2, 2001) [LH_CIV_0000070].

²⁹⁷ E-mail between Lufthansa Cargo employees (Oct. 3, 2001) [LH_CIV_0007829].

²⁹⁸ E-mail between Lufthansa Cargo employees (Oct. 3, 2001) [LH_CIV_0007829].

²⁹⁹ E-mail between Lufthansa Cargo employees (Oct. 5, 2001) [LH_CIV_0007829].

³⁰⁰ Meeting Minutes, Air Cargo Representative Board of Indonesia (Oct. 4, 2001) [LH_CIV_0200082].

³⁰¹ Meeting Minutes, Air Cargo Representative Board of Indonesia, at 9 (Oct. 4, 2001) [LH_CIV_0200082].

³⁰² Meeting Minutes, Air Cargo Representative Board of Indonesia (Oct. 21, 2001) [LH_CIV_0200082].

143. Also on October 4, 2001, British Airways attended a meeting in Oman and discussed the Security Surcharge with other Cartel members, including KLM and Lufthansa Cargo, among others.³⁰³ They “unanimously agreed . . . to implement a [Security] Surcharge of [USD 0.15]/Kg on F A K (freight of all kind) . . . irrespective of destinations.”³⁰⁴ The attendees further agreed that Lufthansa Cargo would implement the Security Surcharge on October 8, 2001, followed by British Airways, Emirates, KLM and others following on October 15, 2001.³⁰⁵

144. On the same day, October 4, 2001, after communications with Lufthansa Cargo, South African Airways sent a draft press release to British Airways and Cartel members Air France, Emirates Airlines, KLM, Lufthansa Cargo, Qantas and Swissair, to inform them that South African Airways was implementing the Security Surcharge.³⁰⁶ South African Airways subsequently issued the press release to the public and implemented the surcharge.³⁰⁷ In addition, Lufthansa Cargo corresponded with British Airways, Air France, Alitalia and Swiss WorldCargo regarding implementation of the Security Surcharge.³⁰⁸

145. On October 5, 2001, British Airways attended an “extraordinary” meeting of the Singapore BAR CSC.³⁰⁹ Also attending were Cartel members Air France, Asiana Airlines, Cathay Pacific, China Airlines, EVA Airways, KLM, Korean Air, Lufthansa Cargo, Northwest

³⁰³ Minutes of the Fourth Oman AOC-CSC Meeting of 2001, at 1 (Oct. 4, 2001) [SIA_CIV_0026913].

³⁰⁴ Minutes of the Fourth Oman AOC-CSC Meeting of 2001, at 2 (Oct. 4, 2001) [SIA_CIV_0026913].

³⁰⁵ Minutes of the Fourth Oman AOC-CSC Meeting of 2001, at 2 (Oct. 4, 2001) [SIA_CIV_0026913].

³⁰⁶ E-mail from Tlelima Makhetha, Vice President and General Manager, South African Airways Cargo (Oct. 4, 2001) [LH_CIV_0000076]; E-mail between Lufthansa Cargo employees (Oct. 4, 2001) [LH_CIV_0000076].

³⁰⁷ E-mail from Tlelima Makhetha, Vice President and General Manager, South African Airways Cargo (Oct. 4, 2001) [LH_CIV_0000076]; E-mail between Lufthansa Cargo employees (Oct. 4, 2001) [LH_CIV_0000076].

³⁰⁸ E-mail between Lufthansa Cargo employees (Oct. 4, 2001) [LH_CIV_0130927].

³⁰⁹ Minutes, Extraordinary Meeting of the Singapore BAR Cargo Subcommittee (Oct. 5, 2001) [SIA_CIV_0028154].

Airlines, Qantas Airways, SAS, Singapore Air and Thai Airways, among others.³¹⁰ They discussed the Security Surcharge and confirmed their intention to implement it.³¹¹

146. In addition, prior to implementing the Security Surcharge, Lufthansa Cargo coordinated at the CEO level with at least sixteen Cartel members, including the Director of Operations of British Airways, regarding the Surcharge.³¹²

147. The Airfreight Carriers, including British Airways, implemented the Security Surcharge effective in October 2001, at which time British Airways and its co-conspirators began charging and DHL began paying a EUR 0.15 per kilogram Security Surcharge on shipments worldwide, including on U.S. Airfreight Shipping Services.³¹³

148. On October 8, 2001, the Air Cargo Association of the Netherlands held a meeting at Dorint Hotel Schiphol in Amsterdam and discussed the Security Surcharge.³¹⁴ British Airways attended, along with Cartel members Lufthansa, Air France, KLM, Cargolux, SAS, Alitalia, Cathay Pacific, EVA Airways, Japan Airlines, Korean Air, Martinair, Nippon, Australian Airlines, Polar Air, Singapore Airlines, and United Airlines, among others.³¹⁵ According to the minutes of the meeting, “[a] round the table discussion was initiated to learn about the ins-and-outs of the charges and forms.”³¹⁶ It was also “made very clear to all present [that] all the decisions ... come from the headoffices of the individual airlines,” making clear that this was not a discretionary surcharge.³¹⁷

³¹⁰ Minutes, Extraordinary Meeting of the Singapore BAR Cargo Subcommittee (Oct. 5, 2001) [SIA_CIV_0028154].

³¹¹ Minutes, Extraordinary Meeting of the Singapore BAR CSC (Oct. 5, 2001) [SIA_CIV_0028154].

³¹² E-mail between Lufthansa Cargo employees regarding letter to CEOs (Oct. 24, 2001) [LH_CIV_0000283].

³¹³ Chart, *War Risk/Security Surcharge Update* (Oct. 12, 2001) [LH_CIV_0240802]; Chart, *Security Surcharge Status Report* (Oct. 31, 2001) [AA0007191]. See also Newsletter, KLM Cargo, *Security Surcharge on KLM Cargo Shipments Effective October 15, 2001* (Oct. 1, 2001) [LH_CIV_0001249].

³¹⁴ Minutes, ACAN Meeting at 1 (Oct. 8, 2001) [LH_CIV_0231404].

³¹⁵ Minutes, ACAN Meeting at 1 (Oct. 8, 2001) [LH_CIV_0231404].

³¹⁶ Minutes, ACAN Meeting at 1 (Oct. 8, 2001) [LH_CIV_0231404].

³¹⁷ Minutes, ACAN Meeting at 1 (Oct. 8, 2001) [LH_CIV_0231404].

149. On November 26, 2002, Cathay Pacific wanted to reduce its Security Surcharge and sought Lufthansa Cargo's permission.³¹⁸ Instead of agreeing to this deviation, Lufthansa Cargo reached out to British Airways and other Cartel members to pressure Cathay to continue to adhere to the Cartel agreement.³¹⁹ Indeed, during the week of December 5, 2002, at a meeting of the Cargo Subcommittee of the Hong Kong BAR, Lufthansa, British Airways, Martinair, Qantas, Cargolux, Polar Air and Emirates all agreed to stick to the original agreement.³²⁰ Ultimately, Cathay Pacific continued to charge the same Cartel-level Security Surcharge of EUR 0.15 per kilogram.³²¹

150. At a January 23, 2003 meeting of the Singapore BAR CSC, the members "agreed that there would be no reduction to the [Security] charge."³²²

151. On May 9, 2003, British Airways attended an ACRB meeting in Indonesia, where the participants, including Cartel members Cargolux, Emirates, KLM, Singapore, Lufthansa, Cathay Pacific, Malaysia, Thai, among others, reiterated that "[t]he security surcharge will maintain, as agreed."³²³

152. On January 20, 2004, Martinair invited representatives from six other Airfreight Carriers, including British Airways, to a meeting at the Martinair Cargo Office in Hong Kong on January 26, 2004.³²⁴ Other attendees included Air France, KLM, and Lufthansa Cargo.³²⁵ They discussed whether they should suspend the Security Surcharge and instead increase base-freight

³¹⁸ E-mail from Kwong Kuen Leung, Cathay Pacific, to Regional Sales Manager, South China & Taiwan, Lufthansa Cargo (Nov. 26, 2002) [LH_CIV_0000351].

³¹⁹ E-mail from Regional Sales Manager, South China & Taiwan, Lufthansa Cargo, to General Manager for Pricing, Lufthansa Cargo (Nov. 26, 2002) [LH_CIV_0000351]; E-mail from Regional Sales Manager, South China & Taiwan, Lufthansa Cargo, to General Manager for Pricing, Lufthansa Cargo (Dec. 5, 2002) [LH_CIV_0000088].

³²⁰ E-mail from Regional Sales Manager, South China & Taiwan, Lufthansa Cargo, to General Manager of Pricing, Lufthansa Cargo (Dec. 5, 2002) [LH_CIV_0000088].

³²¹ See Chart, Lufthansa Cargo, *Carrierzuschläge* (Mar. 2003) [LH_CIV_0031564].

³²² Minutes, Singapore Bar Sub-Committee Meeting (Jan. 23, 2003) [QAL-01-195170].

³²³ Minutes, ACRB Meeting, at 1 (May 9, 2003) [LH_CIV_0200046].

³²⁴ E-mail from Winnie Hui, Management Assistant for Asia Pacific, Martinair, to representatives of Air France, Alitalia, British Airways, KLM, Lufthansa Cargo and SAS (Jan. 20, 2004) [LH_CIV_0148917].

³²⁵ E-mail between Lufthansa Cargo employees (Jan. 26, 2004) [LH_CIV_0001407].

rates.³²⁶ Air France stated that it would not discontinue the Security Surcharge even if there were an increase in base-freight rates.³²⁷ The attendees noted that the Airfreight Carriers based in Hong Kong supported the Security Surcharge, and the attendees decided to “get in touch with CX’s [Cathay Pacific’s] senior management” immediately to discuss the Security Surcharge.³²⁸ They then agreed to, and did, continue to impose the Security Surcharge on a worldwide basis after this meeting.

153. On September 2, 2004, Martinair sent an e-mail to KLM and Lufthansa Cargo, to which Martinair attached a draft announcement regarding its Security Surcharge.³²⁹ Martinair asked KLM and Lufthansa Cargo to review the announcement and then to call Peter Scholten at Martinair.³³⁰ When Lufthansa Cargo called Martinair, Martinair shared with Lufthansa Cargo the contents of Martinair’s prior conversations regarding the Security Surcharge with other Airfreight Carriers, including British Airways, Air France, Cargolux, Cathay Pacific, KLM and SAS.³³¹ According to a Lufthansa email, British Airways said “it would follow if majority increase” the Security Surcharge,³³² and British Airways did so.

154. British Airways continued to charge DHL the Security Surcharge pursuant to the Cartel agreement throughout the rest of the Cartel period and for at least several months thereafter.

³²⁶ E-mail between Lufthansa Cargo employees (Jan. 26, 2004) [LH_CIV_0001407].

³²⁷ E-mail between Lufthansa Cargo employees (Jan. 26, 2004) [LH_CIV_0001407].

³²⁸ E-mail between Lufthansa Cargo employees (Jan. 26, 2004) [LH_CIV_0001407].

³²⁹ E-mail from Winni Hui, Management Assistant Asia Pacific, Martinair Cargo, to Regional Sales Manager, South China & Taiwan, Lufthansa Cargo, and Corneel Koster, KLM Cargo (Sept. 2, 2004) [LH_CIV_0051233].

³³⁰ E-mail from Winni Hui, Management Assistant Asia Pacific, Martinair Cargo, to Regional Sales Manager, South China & Taiwan, Lufthansa Cargo, and Corneel Koster, KLM Cargo (Sept. 2, 2004) [LH_CIV_0051233].

³³¹ E-mail between Lufthansa Cargo employees (Sept. 13, 2004) [LH_CIV_0051233].

³³² *Id.*

VI. The Cartel Members Also Colluded on Base Rate Increases

155. The conspiracy was not limited to Surcharges. It also encompassed base-freight rates. In addition to agreeing not to cut base rates to offset Surcharges, British Airways and the other Cartel members agreed to increase base rates on certain routes.

156. Prior to imposing the Fuel Surcharge, British Airways had coordinated base-freight rates with other Airfreight Carriers. Accordingly, base-freight rates were already at supracompetitive levels at the time British Airways and the other Cartel members implemented Fuel Surcharges.

- a. In late March 1994, Air France, British Airways and Lufthansa Cargo all introduced “new (increased) rates effective 01 April Due to [Lufthansa Cargo’s] prior co-ordination with AF [Air France] and BA [British Airways] there has . . . been no opposition.”³³³ In addition, Air France, British Airways and Lufthansa Cargo held “a joint meeting on a weekly basis to co-ordinate activities.”³³⁴
- b. In September 1994, representatives from British Airways, Air France, Alitalia, Air Canada, Iberia Airlines, KLM, Lufthansa Cargo and Swissair met at the Hilton Airport Dorval in Montreal, Canada.³³⁵ The carriers shared their capacity and base-freight rate information with their competitors.³³⁶ Air Canada stated that “space is a premium, yields have increased and ADD-HOC [sic] rates have been eliminated.”³³⁷ KLM stated that “*the Montreal market does not support the available capacity*” and added that it “*would like to see the bottom line*

³³³ Lufthansa Cargo Memorandum (Apr. 7, 1994) [LH_CIV_0139313].

³³⁴ Lufthansa Cargo Memorandum (Apr. 7, 1994) [LH_CIV_0139313].

³³⁵ Minutes of Carriers Meeting, Canadian Airlines [LH_CIV_0102883].

³³⁶ Minutes of Carriers Meeting, Canadian Airlines, at 1, 3 [LH_CIV_0102883].

³³⁷ Minutes of Carriers Meeting, Canadian Airlines, at 1 [LH_CIV_0102883].

increased.”³³⁸ Moreover, “KLM advised that NW [Northwest] will propose a huge rate increase shortly”³³⁹ All Airfreight Carriers present at the meeting, including British Airways agreed “to increase market rates November 1st [and a]greed meetings should be held regularly to maintain communication flow.”³⁴⁰

- c. On May 25, 1999, Korean Air hosted a meeting to discuss rates.³⁴¹ British Airways attended the meeting along with Cartel members Air France, Korean Air and Swissair, among others.³⁴² The first topic of discussion was “Rates,” and the attending Airfreight Carriers agreed “to keep the [base-freight rate] level on a reasonable level.”³⁴³
- d. During the summer of 1999, British Airways, Air France, KLM, Lufthansa Cargo and Swissair coordinated a price increase that ultimately took effect on September 1, 1999. The coordination began in June 1999, when Air France sent an e-mail jointly addressed to Lufthansa Cargo KLM Cargo, and Swissair.³⁴⁴ In that e-mail, Air France noted that rates were not supposed to be included in Air France’s faxes, but that another Air France representative had included rates in a recent fax.³⁴⁵ Air France preferred that rates be coordinated in a manner that did not leave a written record. Indeed, according to Air France, “[n]ormally these things

³³⁸ Minutes of Carriers Meeting, Canadian Airlines, at 2-3 (undated) [LH_CIV_0102883] (emphasis in original).

³³⁹ Minutes of Carriers Meeting, Canadian Airlines, at 3 (undated) [LH_CIV_0102883].

³⁴⁰ Minutes of Carriers Meeting, Canadian Airlines, at 3 (undated) [LH_CIV_0102883].

³⁴¹ Minutes of First Meeting, Korean Air Cargo (June 3, 1999) [SIA_CIV_030205].

³⁴² Minutes of First Meeting, Korean Air Cargo (June 3, 1999) [SIA_CIV_030205].

³⁴³ Minutes of First Meeting, Korean Air Cargo (June 3, 1999) [SIA_CIV_030205].

³⁴⁴ E-mail from Otto Meyer, Air France, to representatives of KLM Cargo, Lufthansa Cargo and Swissair (June 23, 1999) (certified translation) [LH_CIV_0002172].

³⁴⁵ E-mail from Otto Meyer, Air France, to representatives of KLM Cargo, Lufthansa Cargo and Swissair (June 23, 1999) (certified translation) [LH_CIV_0002172].

are centrally managed.”³⁴⁶ Lufthansa Cargo then looped in British Airways, on an email to Air France, KLM and Swissair.³⁴⁷ The subject of the e-mail was “rate increase eff. 01.09.1999,” and Lufthansa Cargo’s Sales Manager for Germany stated that he was “looking forward [to] receiving the [rate sheets] from your side” and had “confidence that we will manage the rate increase successfully.”³⁴⁸ The rate sheets included rates to/from the following U.S. points: Atlanta, Baltimore, Columbus, Dallas, Denver, Detroit, Greenville, Houston, Indianapolis, Los Angeles, Memphis, Minneapolis, New York, Newark, Oklahoma, Philadelphia, Phoenix, Pittsburg, Portland, Rochester, San Francisco, San Jose, Seattle, St. Louis, Tampa, and Washington D.C.³⁴⁹ The next day, July 16, 1999, KLM responded by sending its rate sheet to British Airways, Air France, Lufthansa Cargo and Swissair.³⁵⁰ The KLM rate sheet included rates on shipments to and from the United States.³⁵¹

- e. On July 25, 1999, British Airways’ Cargo Commercial Manager for North Europe, wrote to Lufthansa Cargo’s Sales Manager for Germany to facilitate the September price increase.³⁵² British Airways confirmed that it “will be increasing prices across Europe with effect from the 01st September. Exceptions will be

³⁴⁶ E-mail from Otto Meyer, Air France, to representatives of KLM Cargo, Lufthansa Cargo and Swissair (June 23, 1999) (certified translation) [LH_CIV_0002172].

³⁴⁷ E-mail from Sales Manager for Germany, Lufthansa Cargo, to representatives of Air France, British Airways, KLM and Swissair (July 15, 1999) [LH_CIV_0002209].

³⁴⁸ E-mail from Sales Manager for Germany, Lufthansa Cargo, to representatives of Air France, British Airways, KLM and Swissair (July 15, 1999) [LH_CIV_0002209].

³⁴⁹ E-mail from Sales Manager for Germany, Lufthansa Cargo, to representatives of Air France, British Airways, KLM and Swissair (July 15, 1999) [LH_CIV_0002209].

³⁵⁰ E-mail from Bernd von Seelen, KLM Cargo, to representatives of Air France, British Airways, Lufthansa Cargo and Swissair (July 16, 1999) [LH_CIV_0002209].

³⁵¹ E-mail from Sales Manager for Germany, Lufthansa Cargo, to representatives of Air France, British Airways, KLM and Swissair (July 15, 1999) [LH_CIV_0002209].

³⁵² E-mail from Warrant Tempest, British Airways, to Sales Manager for Germany, Lufthansa Cargo (July 25, 1999) [LH_CIV_0002217].

identified on Tuesday at a pricing forum, but I would expect Scandinavia & Italy *to mirror your own* effective date of 01 October.”³⁵³ British Airways subsequently e-mailed Lufthansa Cargo’s Sales Manager for Germany attaching British Airways’ rates, stating “a[s] agreed by Mr. Tempest, please find attached our rates applicable 1 SEP 99.”³⁵⁴ The British Airways rate sheet included rates on shipments to and from the United States.³⁵⁵

- f. On January 6, 2000, representatives of Cartel members British Airways, Air France, KLM, Lufthansa Cargo and Swissair attended a “beer garden meeting.”³⁵⁶ “In addition to the fuel surcharge topic, discussions revolved primarily about the rate policy for the next round.”³⁵⁷ The attending Airfreight Carriers agreed to significant price increases, including increases on flights to and from the United States.³⁵⁸ The attendees also scheduled “Price Setting Workshops” to occur in February 2000.³⁵⁹
- g. On January 18, 2000, a “Price Adjustment” meeting was held in Japan.³⁶⁰ Representatives from British Airways attended the meeting.³⁶¹ The other Airfreight Carriers in attendance included Cartel members Air France, Alitalia, All Nippon Airways, Japan Airlines, KLM, Lufthansa Cargo, Nippon Cargo

³⁵³ E-mail from Warrant Tempest, British Airways, to Sales Manager for Germany, Lufthansa Cargo (July 25, 1999) [LH_CIV_0002217] (emphasis added).

³⁵⁴ E-mail from Kuberg Ralf, British Airways, to Sales Manager for Germany, Lufthansa Cargo (Sept. 1, 1999) [LH_CIV_0002228].

³⁵⁵ E-mail from Warrant Tempest, British Airways, to Sales Manager for Germany, Lufthansa Cargo (July 25, 1999) [LH_CIV_0002217] (emphasis added).

³⁵⁶ E-mail between Lufthansa Cargo employees (Jan. 6, 2000) (certified translation) [LH_CIV_0231535].

³⁵⁷ E-mail between Lufthansa Cargo employees (Jan. 6, 2000) (certified translation) [LH_CIV_0231535].

³⁵⁸ E-mail between Lufthansa Cargo employees (Jan. 6, 2000) (certified translation) [LH_CIV_0231535].

³⁵⁹ E-mail between Lufthansa Cargo employees (Jan. 6, 2000) (certified translation) [LH_CIV_0231535].

³⁶⁰ E-mail between Lufthansa Cargo employees (Jan. 19, 2000) [LH_CIV_0239289].

³⁶¹ E-mail between Lufthansa Cargo employees (Jan. 19, 2000) [LH_CIV_0239289].

Airlines and SAS.³⁶² The attending Airfreight Carriers reached “a very close consensus” to increase rates to “all destination areas” and then to implement another rate increase in “autumn 2000.”³⁶³

157. In addition to agreeing not to cut base rates to offset Surcharges, the Cartel members including British Airways continued to collude on base rate increases even after Fuel Surcharges had been introduced.

- a. On January 18, 2000, a “Price Adjustment” meeting was held in Japan.³⁶⁴ The Airfreight Carriers in attendance included Air France, Alitalia, All Nippon Airways, British Airways, Japan Airlines, KLM, Lufthansa Cargo, Nippon Cargo Airlines and SAS.³⁶⁵ The attending Airfreight Carriers reached “a very close consensus” to increase rates to “all destination areas” and then to implement another rate increase in “autumn 2000.”³⁶⁶
- b. On April 20, 2000, British Airways, Lufthansa Cargo, Air France and KLM exchanged information on “Rate developments/increases.”³⁶⁷
- c. On September 20, 2001, Air France met with representatives from Cargolux, Lufthansa Cargo, MNG Airlines and Turkish Airlines in Istanbul, Turkey.³⁶⁸ The attendees agreed to “new rates to North America.”³⁶⁹ The Lufthansa Cargo

³⁶² E-mail between Lufthansa Cargo employees (Jan. 19, 2000) [LH_CIV_0239289].

³⁶³ E-mail between Lufthansa Cargo employees (Jan. 19, 2000) [LH_CIV_0239289].

³⁶⁴ E-mail between Lufthansa Cargo employees (Jan. 19, 2000) [LH_CIV_0239289].

³⁶⁵ E-mail between Lufthansa Cargo employees (Jan. 19, 2000) [LH_CIV_0239289].

³⁶⁶ E-mail between Lufthansa Cargo employees (Jan. 19, 2000) [LH_CIV_0239289].

³⁶⁷ E-mail from Sales Manager, Germany, Lufthansa Cargo, to representatives of Air France, British Airways, KLM and Swissair (Apr. 20, 2000) [LH_CIV_0130501].

³⁶⁸ E-mail from Henry Templin, Country Manager, Turkey, Cargolux, to M. Eraltan, Air France, and representatives of Lufthansa Cargo, MNG Airlines and Turkish Airlines (Sept. 19, 2001) [LH_CIV_0055591].

³⁶⁹ E-mail from Henry Templin, Country Manager, Turkey, Cargolux, to M. Eraltan, Air France, and representatives of Lufthansa Cargo, MNG Airlines and Turkish Airlines (Sept. 19, 2001) [LH_CIV_0055591].

representative noted that “[w]e are quite confident that this mutual agreements [sic] will lead us to prosperous times.”³⁷⁰

- d. In late September 2001, British Airways coordinated base-freight rates directly with other Airfreight Carriers. For example, British Airways informed Swissair that “BA [British Airways] intends to increase gross rates as well as net rates by [a hefty] % eg on all applicable rates”³⁷¹
- e. On October 29, 2001, ACRB Indonesia held a meeting and discussed base rates and established a “Market Development Program,” which was a “gentlemen [sic] agreement program among [ACRB Indonesia] members aiming to set [a] minimum [price] level as to keep the market price not deteriorate [sic] below the level”³⁷² In particular, the ACRB members agreed to a “minimum rate (net rate) to various destinations,” including flights to “EAST COAST USA” and “WEST COAST USA.”³⁷³ These Airfreight Carriers agreed to implement these rates effective December 1, 2001.³⁷⁴ Although British Airways was unable to attend the meeting, the minutes state that British Airways “will give approval.”
- f. In March 2002, Air France, British Airways and Lufthansa Cargo had discussions relating to “coordination of the price structures.”³⁷⁵
- g. On July 12, 2002, representatives of British Airways, Air France, KLM, Martinair, Alitalia, Cathay Pacific, China Airlines, Dragonair, EVA Air, Finnair, Lufthansa Cargo, Malaysian Airlines System, SAS, Singapore Air and Virgin

³⁷⁰ E-mail from Lufthansa Cargo to M. Eraltan, Air Franec, and representatives of Cargolux, MNG Airlines, and Turkish Airlines (Sept. 20, 2001) [LH_CIV_0055591].

³⁷¹ Presentation, Swissair, *Possibilities of War Risk & security surcharges in SRC*, at 2 (Sept. 25, 2001) [LH_CIV_0006616].

³⁷² Meeting Minutes, Air Cargo Representative Board of Indonesia, at 1 (Oct. 21, 2001) [LH_CIV_0200082].

³⁷³ Meeting Minutes, Air Cargo Representative Board of Indonesia, at 2, 4 (Oct. 21, 2001) [LH_CIV_0200082].

³⁷⁴ Meeting Minutes, Air Cargo Representative Board of Indonesia, at 2 (Oct. 21, 2001) [LH_CIV_0200082].

³⁷⁵ E-mail between Lufthansa Cargo employees (Mar. 7, 2002) [LH_CIV_0002445].

Atlantic met in Hong Kong to discuss base freight rate increases and capacities.³⁷⁶

The attending Airfreight Carriers agreed “to go for a general rate increase”³⁷⁷

In particular, British Airways agreed to an initial rate increase effective July 15, 2002, and “one more planned in October / same cap but trying to increase by 1 F [sic] effective Oct.”³⁷⁸

- h. On August 21, 2002, British Airways, Air France and Lufthansa Cargo coordinated a rate increase from India.³⁷⁹ The increase was 6% to Europe and 10% to the rest of the world (including the United States), effective September 1, 2002.³⁸⁰
- i. On August 23, 2002, the Airfreight Carriers coordinated a base-rate increase at a meeting of the Board of Airline Representatives in Germany (“BARIG”) Cargo Committee (known as the “BCC”).³⁸¹ According to the minutes of the meeting, Lufthansa Cargo “informed [the attendees] about forthcoming rate adjustments.”³⁸² British Airways attended the meeting as did Cartel Members Air France, Air New Zealand, Japan Airlines, KLM, Malaysian Airlines System, SAS, Saudi Arabian Airlines, Singapore Air, Swiss WorldCargo and VARIG.³⁸³ The flights for which the Airfreight Carriers agreed to increase rates included flights to and from the United States.

³⁷⁶ E-mail from Regional Manager Sales, South China & Taiwan, Lufthansa Cargo, to several Lufthansa Cargo employees (July 12, 2002) [LH_CIV_0051730].

³⁷⁷ E-mail from Regional Manager Sales, South China & Taiwan, Lufthansa Cargo, to several Lufthansa Cargo employees (July 12, 2002) [LH_CIV_0051730].

³⁷⁸ E-mail from Regional Manager Sales, South China & Taiwan, Lufthansa Cargo, to several Lufthansa Cargo employees (July 12, 2002) [LH_CIV_0051730].

³⁷⁹ E-mail between Lufthansa Cargo employees (Aug. 21, 2002) [LH_CIV_0132347].

³⁸⁰ E-mail between Lufthansa Cargo employees (Aug. 21, 2002) [LH_CIV_0132347].

³⁸¹ Minutes, BARIG Cargo Committee Meeting (Aug. 23, 2002) [LH_CIV_0162098].

³⁸² Minutes, BARIG Cargo Committee Meeting, at 2 (Aug. 23, 2002) [LH_CIV_0162098].

³⁸³ Minutes, BARIG Cargo Committee Meeting, at 1 (Aug. 23, 2002) [LH_CIV_0162098].

- j. On October 3, 2002, British Airways shared capacity information with Cartel members Air France, Alitalia, All Nippon Airways, Japan Airlines, KLM, Lufthansa Cargo, Nippon Cargo Airways and SAS.³⁸⁴
- k. In February 2003, Lufthansa Cargo discussed with British Airways and other Cartel members a rate increase for flights to the United States.³⁸⁵ Lufthansa Cargo also noted that “KL[M] is aware of our signal and is surprised that we take this step in the summer during low season etc . . . (don’t have the courage in this respect in my opinion).”³⁸⁶ The email warned that it “would be good if you do not forward this mail.”³⁸⁷
- l. On March 20, 2003, British Airways participated in a Korea BAR Cargo Committee meeting, attended by Air France, Asiana, Cathay Pacific, Japan Airlines, KLM, Korean Air, Lufthansa Cargo, Nippon Cargo Airlines, Northwest Airlines, Polar Air Cargo, Singapore Air, Swiss WorldCargo, Thai Airways and United Airlines.³⁸⁸ The participants discussed the “Price Policy During the 2nd

³⁸⁴ Fax from Air France Cargo Japan / Mizuhara to representatives of Alitalia, All Nippon Airways, British Airways, Japan Airlines, KLM, Lufthansa Cargo, Nippon Cargo Airways and SAS (Oct. 3, 2002) [LH_CIV_0202406]; Fax from M. Tashiro, British Airways World Cargo, to representatives of Air France, Alitalia, All Nippon Airways, Japan Airlines, KLM, Lufthansa Cargo, Nippon Cargo Airways and SAS (Oct. 3, 2002) [LH_CIV_0202408]; *See, e.g.*, Fax from K. Sagami, KLM Cargo, to representatives of Air France, Alitalia, All Nippon Airways, British Airways, Japan Airlines, Lufthansa Cargo, Nippon Cargo Airways and SAS (Sept. 9, 2002) [LH_CIV_0202410]; Fax from SAS Cargo to representatives of Air France, Alitalia, All Nippon Airways, British Airways, Japan Airlines, KLM, Lufthansa Cargo and Nippon Cargo Airlines (Oct. 3, 2002) [LH_CIV_0202412]; Fax from Ando for Fujimura, Nippon Cargo Airlines, to representatives of Air France, Alitalia, All Nippon Airways, British Airways, Japan Airlines, KLM, Lufthansa Cargo and SAS (Oct. 8, 2002) [LH_CIV_0202411]; Fax from Kanazawa for Takuma, Alitalia / Tokyo, to representatives of Air France, All Nippon Airways, British Airways, Japan Airlines, KLM, Lufthansa Cargo, Nippon Cargo Airways and SAS (Oct. 9, 2002) [LH_CIV_0202407].

³⁸⁵ E-mail from General Manager of Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Feb. 12, 2003) (unofficial translation) [LH_CIV_0000101].

³⁸⁶ E-mail from General Manager of Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Feb. 12, 2003) (unofficial translation) [LH_CIV_0000101].

³⁸⁷ E-mail from General Manager for Pricing, Lufthansa Cargo, to Senior Vice President of Marketing, Lufthansa Cargo (Feb. 12, 2003) (unofficial translation) [LH_CIV_0000101].

³⁸⁸ Notice of Cargo Committee Meeting, Korea BAR (Mar. 20, 2003) [LH_CIV_0242747].

Quarter.”³⁸⁹ And on March 23, 2005, the group again shared competitively sensitive information.³⁹⁰

- m. On March 27, 2003, British Airways attended a GCCI meeting at the Dulcinea Coffee Shop and Restaurant and discussed routes and engaged in a “Market Update.”³⁹¹
- n. On May 19, 2003, British Airways met with other Cartel members in Delhi, India and discussed how to increase “yields.”³⁹² Other Airfreight Carriers in attendance included Lufthansa Cargo, Air France, Air India, Austrian Airlines, Cathay Pacific, Delta Airlines, EVA Airways, KLM, Korean Air, Singapore Air, Swiss WorldCargo and Thai Airways.³⁹³
- o. On November 25, 2003, British Airways attended a meeting of the Korea BAR Cargo Committee.³⁹⁴ Other Cartel members in attendance were Lufthansa Cargo, Air France, KLM, Alitalia, Asiana, Cathay Pacific, Japan Airlines, Korean Air, Northwest Airlines, Polar Air Cargo, Singapore Air, Thai Airways and United Airlines.³⁹⁵ The attendees discussed the “Price Policy During High Demand Seasons” and engaged in “Information Sharing.”³⁹⁶

³⁸⁹ Notice of Cargo Committee Meeting, Korea BAR (Mar. 20, 2003) [LH_CIV_0242747].

³⁹⁰ Notice of Cargo Committee Meeting, Korea BAR (Mar. 23, 2005) [LH_CIV_0245051].

³⁹¹ Agenda, GCCI Meeting (Mar. 27, 2003) [LH_CIV_0240795].

³⁹² E-mail from Vasumathi Jayareman, Air India, to representatives of Air France, Air India, Austrian Airlines, British Airways, Cathay Pacific, Delta Airlines, Egypt Air, El Al Israel Airlines, Eva Airways, Emirates, Ethiopian Airlines, Gulf Air, KLM, Korean Air, Lufthansa Cargo, Singapore Air, Swiss WorldCargo and Thai Airways (May 12, 2003) [SIA_CIV_0037825].

³⁹³ E-mail from Vasumathi Jayareman, Air India, to representatives of Air France, Air India, Austrian Airlines, British Airways, Cathay Pacific, Delta Airlines, Egypt Air, El Al Israel Airlines, Eva Airways, Emirates, Ethiopian Airlines, Gulf Air, KLM, Korean Air, Lufthansa Cargo, Singapore Air, Swiss WorldCargo and Thai Airways (May 12, 2003) [SIA_CIV_0037825].

³⁹⁴ Notice of Cargo Committee Meeting, Korea BAR (Nov. 25, 2003) [LH_CIV_0245027].

³⁹⁵ Notice of Cargo Committee Meeting, Korea BAR (Nov. 25, 2003) [LH_CIV_0245027].

³⁹⁶ Notice of Cargo Committee Meeting, Korea BAR (Nov. 25, 2003) [LH_CIV_0245027].

- p. On December 5, 2003, British Airways exchanged with Cartel member Swiss World Cargo estimates of “Demand Potential” for shipments to and from London, United Kingdom, and Frankfurt, Germany, including flights to and from locations in the United States.³⁹⁷
- q. In mid-2004, the Air Cargo Club of New England held its summer BBQ.³⁹⁸ British Airways attended the BBQ as did Lufthansa, Air France, Alitalia, Air Canada, American Airlines, Continental Airlines, Northwest, US Airways and Virgin Atlantic.³⁹⁹ A Lufthansa Cargo summary of the meeting states that “[t]he subject of conversation was the “\$.20 rate @1000kg.”⁴⁰⁰
- r. According to an internal Lufthansa email dated August 26, 2004, “[Lufthansa Cargo] and [Swiss WorldCargo] clearly came to the conclusion that the 2 carriers should aim to increase rates where the market would absorb this and where capacities are restricted. We both felt that this is certainly the case to a number of *US destinations Both carriers are aware that carriers like [Air France, KLM] and [British Airways] should be convinced to join our project and we are trying to invite those carriers as well.* It goes without saying that official agreements can not be made. It is also not the aim that destinations where we increase are identical since capacities and product vary.”⁴⁰¹

³⁹⁷ E-mail between Swiss WorldCargo employees (Dec. 6, 2003) [LH_CIV_0007200].

³⁹⁸ Note, Lufthansa Cargo, *SMART Boston* (undated) [SIA_CIV_0023986].

³⁹⁹ Note, Lufthansa Cargo, *SMART Boston* (undated) [SIA_CIV_0023986].

⁴⁰⁰ Note, Lufthansa Cargo, *SMART Boston* (undated) [SIA_CIV_0023986].

⁴⁰¹ E-mail between Swiss WorldCargo employees (Aug. 26, 2004) [LH_CIV_0007264] (emphasis added).

- s. At least as early as November 2004, Lufthansa Cargo had a password that gave them access to the private and confidential website on which KLM kept its base rates.⁴⁰²
- t. On February 17, 2005, Swiss WorldCargo's Account Manager for Miami, Florida, was "able to talk to" representatives of British Airways, Lufthansa Cargo and Alitalia, all of whom told the Swiss Account Manager that they "discourage flower [out of Miami] by . . . offering significantly higher prices to the local [Miami] flower Growers."⁴⁰³
- u. On March 23, 2005, British Airways participated in a Korea BAR Cargo Committee meeting, attended by Air France, Asiana, Cathay Pacific, Japan Airlines, KLM, Korean Air, Lufthansa Cargo, Nippon Cargo Airlines, Northwest Airlines, Polar Air Cargo, Singapore Air, Swiss WorldCargo, Thai Airways and United Airlines. The group shared competitively sensitive information about rates.⁴⁰⁴
- v. On or about November 30, 2005, British Airways, Air France, Delta, KLM and Lufthansa discussed rate increases.⁴⁰⁵ Those five Airfreight Carriers reached an "understanding" that they would "see the outcome of the customer survey regarding the proposed price increase" before meeting to come to a final agreement.⁴⁰⁶

⁴⁰² Minutes, LAX FS Weekly Conference Call, Lufthansa Cargo (Nov. 3, 2004) [LH_CIV_0034261].

⁴⁰³ E-mail between Swiss WorldCargo employees (Feb. 17, 2005) [SIA_CIV_0000051].

⁴⁰⁴ Notice of Cargo Committee Meeting, Korea BAR (Mar. 23, 2005) [LH_CIV_0245051].

⁴⁰⁵ E-mail from Lufthansa Cargo to Gareth Kirkwood, British Airways, and representatives of Air France and Delta (Nov. 30, 2005) [LH_CIV_0061436].

⁴⁰⁶ E-mail from Lufthansa Cargo to Gareth Kirkwood, British Airways, and representatives of Air France and Delta (Nov. 30, 2005) [LH_CIV_0061436].

VII. The Airfreight Carriers Engaged in Frequent Communications to Monitor Adherence to the Cartel

158. In addition to agreeing and coordinating on Surcharges and base-freight rates, the Cartel members, including British Airways, engaged in frequent communications to monitor the Cartel. The communications included in-person meetings, e-mails, faxes and other communications during the Cartel Period in which Cartel members exchanged competitively sensitive information, including prices, capacity and Surcharges. The purpose of the monitoring was to minimize cheating on the Cartel. As one Lufthansa Cargo employee told a representative of another Cartel member, “[o]ne thing which I would not like to see is a competition and price war against each other. We have worked together for such a long time, to our mutual satisfaction, that I would like to see a joint approach [] continue.”⁴⁰⁷

159. The Cartel was designed for easy monitoring. Surcharges were based on weight were applied uniformly across all routes. Given the complexity of the industry, it was important to have “a uniform surcharge system” on a “worldwide basis” without country-by-country variation.⁴⁰⁸ And, as Lufthansa Cargo noted, it was “essential not to change the basis of the calculation (country by country)” in order “to have a transparent uniform basis” for the Fuel Surcharge.⁴⁰⁹ ,

160. British Airways and seven other Cartel members established “[c]lose hotlines . . . with immediate effect among today’s participants in case of doubt and contradicting/misleading market information.”⁴¹⁰

⁴⁰⁷ E-mail from Senior Vice President of Sales, Lufthansa Cargo, to T. Fukuchi, Japan Airlines (June 8, 2001) [LH_CIV_0000245].

⁴⁰⁸ E-mail from a Lufthansa Cargo employee to ACBA Members (June 5, 2003) (emphasis added) [LH_CIV_0200551].

⁴⁰⁹ E-mail from a Lufthansa Cargo employee to ACBA Members (June 6, 2003) (emphasis added) [LH_CIV_0200551].

⁴¹⁰ E-mail between Lufthansa Cargo employees (Sept. 30, 2002) [LH_CIV_0001210].

VIII. Lufthansa's Leniency Application

161. In or around December 2005, Lufthansa entered the corporate leniency program with the United States Department of Justice ("DOJ"). According to the DOJ, "Lufthansa was conditionally accepted [into the leniency program] after it disclosed its role in the international cargo conspiracy" Lufthansa also obtained conditional leniency from the European Commission and competition authorities in other countries. Lufthansa, in communication with the DOJ, continued to participate in the conspiracy at least through February 2006, allowing the DOJ to collect more information about the Cartel.

IX. The Dawn Raids and Subsequent Price Increases

162. On February 14, 2006, competition authorities around the world raided the headquarters of various European and United States Airfreight Carriers.

163. Notwithstanding the dawn raids, Lufthansa Cargo continued to publish the FPI with the apparent acquiescence of the DOJ as the DOJ continued its investigation.

164. In accordance with the Cartel agreement, the Airfreight Carriers, including British Airways, continued to increase the Fuel Surcharge after the dawn raids. British Airways and its co-conspirators increased the Fuel Surcharge to USD 0.55 per kilogram consistent with the Lufthansa Cargo FPI effective in May 2006. Also consistent with the FPI, British Airways and its co-conspirators increased the Fuel Surcharge to USD 0.60 per kilogram effective between May and June 2006. The Airfreight Carriers were careful to stagger the implementation dates of their Fuel Surcharge increases in an effort to conceal their involvement in the Cartel.

165. Subsequent to the Cartel Period, the supracompetitive prices caused by the Cartel persisted, and DHL continued to pay overcharges caused by the Cartel for at least several months after the Dawn Raids.

X. British Airways' Guilty Plea and Admission of Liability

166. Defendant British Airways and one of its executives pled guilty to criminal antitrust violations in the United States.

- a. British Airways entered a Plea Agreement with the Justice Department and agreed to pay a criminal fine of \$200 million for illegally fixing prices for U.S. Airfreight Shipping Services.⁴¹¹ As part of its Plea Agreement, British Airways agreed to a “factual admission of guilt to the Court” concerning the following facts, among others:⁴¹²
- b. “During the relevant period [March 22, 2002-February 14, 2006] for the cargo conspiracy, the defendant, through its business unit British Airways World Cargo (‘British Airways’), provided international air transportation for cargo between the United States and the United Kingdom.”
- c. “For its air cargo shipments, the defendant charged its customers a rate that consisted of both a base rate and various surcharges and fees, such as a fuel surcharge and a security surcharge.”
- d. “During the relevant period, the defendant’s sales of international air cargo shipments that originated in the United States totaled approximately \$488,650,013.”
- e. “During the relevant period, the defendant, through officers and employees of British Airways, including high-level personnel of British Airways, participated in a conspiracy among major international air cargo carriers, the primary purpose of which was to suppress and eliminate competition by fixing components of the air cargo rates charged to customers for international air shipments, including shipments to and from the United States.”
- f. “In furtherance of the conspiracy, the defendant, through officers and employees of British Airways, engaged in discussions and attended meetings among representatives of other major international air cargo carriers. During these discussions and meetings, agreements were reached to fix components of the cargo rates to be charged to purchasers of air cargo shipments in the United States and elsewhere.”
- g. “During the relevant period for the cargo conspiracy, air cargo shipments sold by one or more of the conspirator carriers, and aircraft necessary to transport the air cargo shipments, as well as payments for the air cargo shipments, traveled in interstate and foreign trade and commerce. The business activities of the defendant and its co-conspirators in connection with the sale and provision of

⁴¹¹ *U.S. v. British Airways PLC*, Criminal No. 07-183 (D.D.C. Aug. 23, 2007) (Plea Agreement) [hereinafter *British Airways Plea Agreement*].

⁴¹² *British Airways Plea Agreement*, *supra* note 411, at 3-6.

international air cargo shipments affected by this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.”

167. On November 10, 2008, a Plea Agreement was filed in the United States District Court for the District of Columbia in DOJ’s case against Keith Packer, who served as British Airways’ Senior Manager of Sales and Marketing, a member of British Airways’ Cargo Leadership Team, and Commercial General Manager of British Airways.⁴¹³ Mr. Packer was charged with

participating in a conspiracy to suppress and eliminate competition by fixing the cargo rates charged to customers for international air shipments, including to and from the United States . . . in unreasonable restraint of foreign and interstate trade and commerce and in violation of the Sherman Antitrust Act, 15 U.S.C. § 1⁴¹⁴

Mr. Packer agreed to “a factual admission of guilt to the Court” similar to that to which British Airways agreed.⁴¹⁵ By pleading guilty, Mr. Packer agreed to pay a \$20,000 fine and to serve eight months in prison for his participation in the Cartel.⁴¹⁶

XI. The Criminal Fines Paid by Cartel Members Reflect Substantial Damage to DHL

A. British Airways’ United States Fine

168. As a part of its Plea Agreement, British Airways agreed to pay a criminal fine of \$200 million for illegally fixing prices for U.S. Airfreight Shipping Services.⁴¹⁷ It also paid a criminal fine of \$100 million for illegally fixing prices for passenger service.

169. The size of the fine reflects the significant damages that British Airways caused to its customers, including DHL. By statute, the maximum corporate fine for a violation of Section 1 of the Sherman Act is the greater of (i) \$100 million; (ii) twice the gross pecuniary gain the

⁴¹³ *U.S. v. Packer*, Criminal No. 08-cr-301-01, 3 (D.D.C. Nov. 10, 2008) (Plea Agreement).

⁴¹⁴ *Id.* at 2-3.

⁴¹⁵ *Id.* at 3-5.

⁴¹⁶ *Id.* at 7-8.

⁴¹⁷ British Airways Plea Agreement, *supra* note 411, at 10

conspirators derived from the crime; or (iii) twice the gross pecuniary loss caused to the victims of the crime by the conspirators. For cargo shipments, DOJ fined British Airways two times the statutory maximum penalty and that fine was based just on shipments *from* the United States.

170. When negotiating their Plea Agreement, British Airways argued that DOJ only had jurisdiction over shipments *from* the United States.⁴¹⁸ Although DOJ disagreed with that assertion,⁴¹⁹ DOJ was willing to base its fine solely on British Airways' total shipments *from* the United States, which still produced a very significant fine. The Plea Agreement recites that “[d]uring the relevant period [March 2002 until February 14, 2006], the defendant’s sales of international air cargo shipments that *originated in* the United States totaled approximately \$488,650,013.”⁴²⁰ DOJ thus concluded that there was \$488.65 million in affected commerce *from* the United States. (DHL paid British Airways approximately \$131 million for Airfreight Shipping Services *from* the United States during the Cartel Period).

171. This Court subsequently ruled that the United States antitrust laws apply to shipments *to* the United States, not just to shipments *from* the United States. British Airway’s total shipments of DHL Cargo into the United States were at least \$197 million during the Cartel Period.

B. The Other Airfreight Carriers’ Guilty Pleas and Criminal Fines

172. To date, twenty Airfreight Carriers, including British Airways, have pled guilty and paid criminal fines in connection with DOJ’s investigation of the price-fixing Cartel

⁴¹⁸ British Airways Plea Agreement, *supra* note 411, at 9.

⁴¹⁹ *Id.* (“The United States disputes the defendant’s position and contends that the defendant’s cargo shipments on trans-Atlantic routes into the United States during the charged period violated the U.S. antitrust laws.”). DOJ added that any fine “that fails to account for cargo shipments into the United States affected by the charged cargo conspiracy would understate the seriousness of, and the harm caused to U.S. victims by, the offenses and would not provide just punishment.” *Id.*

⁴²⁰ *Id.* at 4 (emphasis added).

described in this Complaint. The following chart provides a summary of the guilty pleas entered, the indictments issued, and the fines paid by the Airfreight Carriers and their executives:

Carrier	Date	Details
Aerolinhas Brasileiras S.A.	2/19/2009	Carrier pled guilty and paid a joint fine (with LAN Cargo) of \$109 million
Air France-KLM	7/22/2008	Carrier pled guilty and paid a fine of \$350 million
	4/26/2011	An indictment was returned against Marc Boudier, former Executive Vice President of Air France's Cargo Division, and Jean Charles Foucault, former Vice President of Sales & Marketing in Air France's Cargo Division – the charges are still pending
All Nippon Airways Co. Ltd.	12/6/2010	Carrier pled guilty and paid a fine of \$73 million (for price fixing in both the air cargo and air passenger industries)
Asiana Airlines Inc.	5/5/2009	Carrier pled guilty and paid a \$50 million fine (for price fixing in both the air cargo and air passenger industries)
British Airways Plc.	8/23/2007	Carrier pled guilty and paid a \$300 million fine – \$100 million for passenger and \$200 million for cargo
	11/10/2008	Keith Packer, a British citizen and former Commercial General Manager for British Airways World Cargo, pled guilty and agreed to an eight-month prison sentence and a \$20,000 fine
Cargolux Airlines International S.A.	5/12/2009	Carrier pled guilty and paid a \$119 million fine
	12/8/2011	Ulrich Ogiermann, former President and CEO of Cargolux, and Robert Van de Weg, former Senior Vice President of Sales and Marketing for Cargolux, each pled guilty and agreed to serve 13 months in prison
Cathay Pacific Airways Ltd.	7/22/2008	Carrier pled guilty and paid a \$60 million fine
China Airlines Ltd.	11/3/2010	Carrier pled guilty and paid a \$40 million fine
El Al Israel Airlines Ltd.	2/4/2009	Carrier pled guilty and paid a \$15.7 million fine
EVA Airways Corporation	6/24/2011	Carrier pled guilty and paid a \$13.2 million fine
Japan Airlines International Co. Ltd.	5/7/2008	Carrier pled guilty and paid a \$110 million fine
	11/16/2010	Takao Fukuchi, former president of JAL Cargo Sales, was indicted – the charges are still pending
Korean Air Lines Co. Ltd.	8/24/2007	Carrier pled guilty and paid a \$300 million fine (for price fixing in both the cargo and passenger industries)

Carrier	Date	Details
LAN Cargo S.A.	2/19/2009	Carrier pled guilty and paid a joint fine (with Aerolinhas Brasileiras) of \$109 million
Martinair Holland N.V.	7/22/2008	Carrier pled guilty and paid a \$42 million fine
	6/26/2009	Franciscus Johannes de Jong, former Vice President of Cargo Sales in Europe for Martinair, pled guilty and agreed to a \$20,000 fine and an eight-month prison sentence
	9/21/2010	An indictment was returned for Maria Christina “Meta” Ullings, the former Senior Vice President of Cargo Sales and Marketing for Martinair Cargo – the charges are still pending
Nippon Cargo Airlines Co. Ltd.	5/8/2009	Carrier pled guilty and paid a \$45 million fine
	11/16/2010	Indictments were returned against Yoshio Kunugi and Naoshige Makino, both former senior executives at Nippon Cargo – the charges are still pending Mr. Kunugi also worked at All Nippon Airways after leaving Nippon Cargo in August 2005
Northwest Airlines LLC	8/27/2010	Carrier pled guilty and paid a \$38 million fine
Polar Air Cargo LLC	10/15/2010	Carrier pled guilty and paid a \$17.4 million fine
Qantas Airways Ltd.	1/14/2008	Carrier pled guilty and paid a \$61 million fine
	5/15/2008	Bruch McCaffrey, former Vice President of Freight for the Americans at Qantas, pled guilty and agreed to serve eight months in jail and to pay a \$20,000 fine.
SAS Cargo Group A/S	7/21/2008	Carrier pled guilty and paid a \$52 million fine
	8/29/2008	Timothy Pfeil, SAS’s former highest-ranking U.S. cargo executive, pled guilty and agreed to a \$20,000 fine and a six-month prison sentence
	8/12/2009	Jan Lillieborg, SAS’s former vice president of global sales, was indicted – the charges are still pending
Singapore Airlines	2/8/2011	Carrier pled guilty and paid a \$48 million fine

173. The size of these fines—totaling almost \$1.75 billion in cargo-specific fines—reflects considerable overcharges, for which British Airways is jointly and severally liable.

XII. British Airways' Class Settlement and DHL's Opt Out

174. On May 20, 2011, British Airways entered into a settlement agreement with a class of direct purchasers that bought Airfreight Shipping Services to, from or within the United States from January 1, 2000, through September 11, 2006 (the "Class Settlement Agreement"). Pursuant to the Class Settlement Agreement, British Airways agreed to pay the class \$89,512,000. The Class Settlement Agreement subsequently was approved by this Court.

175. DHL timely opted out of the Class Settlement Agreement in April 2012.

XIII. Fraudulent Concealment

176. British Airways and its co-conspirators engaged in a successful price-fixing Cartel that by its nature was inherently self-concealing.

177. British Airways and its co-conspirators affirmatively and fraudulently concealed their unlawful conduct from DHL, including by, among other things, engaging in secret communications, giving false and pre-textual reasons for the various Surcharges, staggering their implementation of changes in the Fuel and Security Surcharges, and instructing recipients of e-mails concerning the Cartel to keep them "strictly CONFIDENTIAL especially for anti-trust reasons" and to delete them. The Cartel members also expressly agreed to maintain the "confidentiality" of meetings. For example, one e-mail written by a Cartel member stated, "IT GOES WITHOUT SAYING THAT CARRIERS MEETINGS HAVE TO BE TREATED IN A VERY CONFIDENTIAL WAY."

178. Each of the Cartel members' Surcharge announcements during the Cartel Period were intentionally written to convey the impression that each carrier's Surcharges were imposed unilaterally and were necessary to cover increased costs.

179. Moreover, British Airways discussed with other Cartel members how to respond to customer questions and complaints about Fuel Surcharge increases, and agreed to give the

misleading answers so that the customers would think that the Cartel members were acting unilateral in following Lufthansa's lead.⁴²¹

180. To conceal its participation in the Cartel, British Airways published its own FPI during portions of the Cartel Period, giving DHL the misimpression British Airways was imposing its Fuel Surcharge unilaterally.⁴²² In fact, the British Airways FPI levels "run in parallel" with the Lufthansa FPI.⁴²³

181. Neither the U.S. Department of Justice nor any other freight forwarders, including DHL, were able to detect the Cartel because the Fuel Surcharges moved at approximately the same time as public fuel price indexes. Indeed, British Airways' Surcharges and the Surcharges of other Airfreight Carriers were intentionally designed to give the appearance of unilateral and/or follow-the-leader responses to the common stimulus of higher fuel prices.

182. During the Cartel Period, DHL inquired about the Fuel Surcharges, and was told, and reasonably believed, that the Surcharges were based on increases in fuel costs.

183. Because the alleged conspiracy was both self-concealing and affirmatively concealed by British Airways and its co-conspirators, DHL had no knowledge of the alleged conspiracy or of any facts or information which would have caused a reasonably diligent person to investigate whether a conspiracy existed until at the earliest February 14, 2006, when the dawn raids took place. And, even then, DHL did not, and could not have, detected British Airways participation in the Cartel until after DHL reached a settlement on July 5, 2010, with one of the Airfreight Carriers that had participated in the Cartel and obtained that Airfreight Carrier's cooperation in the form of the production of secret, bilateral and multi-lateral

⁴²¹ Meeting Minutes, Hong Kong BAR CSC (July 11, 2005) [LH_CIV_0008573].

⁴²² Newflash, British Airways World Cargo, *British Airways World Cargo to Implement Fuel Surcharge* (Apr. 9, 2002) [QAL-01-209152]

⁴²³ E-mail between Lufthansa Cargo employees (Mar. 20, 2002) [LH_CIV_0050890].

communications evidencing British Airways' participation in the Cartel. However, the statute of limitations did not run during the pendency of the class-action suit against British Airways and during the period covered by the tolling agreement between British Airways and DHL.

XIV. DHL's Damages

184. Prior to the Cartel, Airfreight Carriers, including British Airways, had attempted to unilaterally impose fuel surcharges, but were unable to sustain those surcharges given that the pressures of competition were putting pressure on prices. According to the Minutes of the December 9, 1996, meeting of the IATA Cargo Tariff Conference Steering Group, "events of the recent past [unsuccessful unilateral attempts to impose fuel surcharges] and the resultant market confusion, underline the need for carriers in the future, to develop concerted and co-ordinated industry action under the auspices of an IATA conference."⁴²⁴

185. During the Cartel Period, the Cartel members increased the Fuel Surcharges in the face of falling demand. But for the Cartel, the prices of U.S. Airfreight Shipping Services would have been significantly lower than they actually were during the Cartel Period.

186. British Airways and the other Cartel members purported to justify the Fuel Surcharges as necessary to cover the *additional* cost of fuel above a pre-Cartel base level. However, the Fuel Surcharges substantially over-recovered for increases in the price of fuel. Moreover, during the Cartel Period the Surcharges increased at a much greater rate than the spot price of jet fuel. The Fuel Surcharges that DHL paid to British Airways were not offset by base-rate cuts. Thus, the all-in price that DHL paid was substantially higher than otherwise would have been the case.

187. The Security Surcharge also over-recovered for added security costs that British Airways incurred after the September 11, 2001, terrorist attacks. The Security Surcharges that

⁴²⁴ Minutes, Special Meeting, Cargo Tariff Conferences Steering Group, at 4 (Dec. 9, 1996) [SIA_CIV_0030544].

DHL paid to British Airways were not offset by base-rate cuts. Thus, the all-in price that DHL paid was substantially higher than otherwise would have been the case.

188. From the outset of the Cartel and thereafter, the Airfreight Carriers have never been able to demonstrate that Fuel Surcharges were necessary to recover the additional cost of fuel generated by unexpected fuel price increases during the Cartel Period. When the Cartel members sought DOT approval for the Fuel Surcharges, the DOT declined to grant antitrust immunity, finding the Fuel Surcharge mechanism was “fundamentally flawed and unfair to shippers and other users of cargo air transportation” and would result in “unjustified and unwarranted rate increases.”⁴²⁵ The DOT reasoned, in relevant part, that the “proposed index mechanism, which reflects the volatile nature of the spot market, is at best an imperfect measure of the impact of fuel price increases on carriers.”⁴²⁶ Moreover, the DOT noted that “[m]ost carriers employ fuel hedging programs which they use to limit the effects of jet fuel price volatility and thus discipline their costs” and “many prudent carriers manage to hedge between 70-80 percent of their total fuel needs.”⁴²⁷

189. British Airways continued to overcharge DHL and others for at least two years after the end of the Cartel period.

190. During the Damage Period, approximately 80% of DHL’s shipments of cargo on British Airways were carried stand-by in the lower deck of British Airways’ passenger flights, on which British Airways was also charging separate fuel surcharges to passengers.⁴²⁸ Indeed, British Airways has pled guilty to fixing the prices of passenger fuel surcharges on routes between the United States and the United Kingdom from August 2004 to February 14, 2006.

⁴²⁵ Order, U.S. Dep’t of Transportation, Docket OST-2000-6837-2, at 2 (Mar. 17, 2000), *available at* <http://perma.cc/08YkrDUHXpg>.

⁴²⁶ *Id.*

⁴²⁷ *Id.*

⁴²⁸ Datamonitor Presentation, British Airways World Cargo (2004) [LH__CIV__0194674].

191. At the same time British Airways and the other Cartel members imposed Fuel Surcharges on DHL for cargo transported in the lower-deck of passenger planes, it was also imposing a fuel surcharge on passengers. Thus, when British Airways carried freight on passenger flights (which was the case for 80% of the freight British Airways carried) British Airways significantly over-recovering for actual increases in fuel costs caused by carrying DHL cargo.

192. British Airways is jointly and severally liable for three times the overcharges that DHL paid to the Cartel during the Damage Period.

COUNT ONE

VIOLATION OF SECTION 1 OF THE SHERMAN ACT

193. DHL restates and incorporates by reference each and every allegation contained in the preceding paragraphs.

194. During the Cartel Period, British Airways participated in a global Cartel that fixed the base-freight rates and Surcharges that DHL paid for U.S. Airfreight Shipping Services.

195. British Airways, through its officers and employees, including high-level personnel of its cargo divisions, participated in a conspiracy with one or more providers of Airfreight Shipping Services, a primary purpose of which was to suppress and eliminate competition by fixing one or more components of the prices charged to customers for U.S. Airfreight Shipping Services.

196. In furtherance of the conspiracy, British Airways, through its officers and employees, engaged in discussions and attended meetings with representatives of one or more providers of Airfreight Shipping Services. During these discussions and meetings, agreements

were reached to fix one or more components of the prices to be charged to purchasers of U.S. Airfreight Shipping Services.

197. British Airways participated in numerous overt acts in furtherance of the Cartel, including during the Relevant Damage Period. The overt acts included communications regarding and reaching agreements as to the prices to be charged for U.S. Airfreight Shipping Services.

198. British Airways has pled guilty to participating in the Cartel, and its guilty plea constitutes prima facie evidence of a per se violation of Section 1 of the Sherman Act.

199. British Airways' anticompetitive conduct, as described above, constitutes a per se unreasonable restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

200. British Airways' unlawful conduct had a direct and substantial adverse effect on U.S. commerce, harming U.S. consumers, including DHL, by increasing their costs and thereby reducing the output of U.S. commerce.

201. As a direct and proximate result of British Airways' unlawful conduct and the unlawful conspiracy alleged herein, DHL has suffered injury and damage to its business and property during and after the Cartel Period. DHL's injuries flow directly from the anticompetitive effects of the unlawful price-fixing agreements between Defendant and its co-conspirators on U.S. commerce.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to:

- a. Order that judgment be entered against British Airways, and in favor of DHL, for three times the overcharges DHL paid to the Cartel members;
- b. Order that British Airways be permanently enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing any contracts, combinations,

conspiracies, agreements, understanding or concert of action, or adopting any practice, plan, program or design having a similar purpose or effect of restraining competition;

c. Award DHL its attorneys' fees and reasonable costs, and pre-judgment and post-judgment interest, to the fullest extent permitted by law; and

d. Award such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all claims asserted in this Complaint so triable.

Dated: October 30, 2015

Respectfully submitted,

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